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A SITUATIONAL MILITARY ETHIC

A thesis presented to the Faculty of the U.S. Army
Command and General College in partial
fulfillment of the requirements for the
degree

MASTER OF MILITARY ART AND SCIENCE

by

G. L. WALTERS CPT(P), USA
B.A., Auburn University, Auburn, Alabama, 1988

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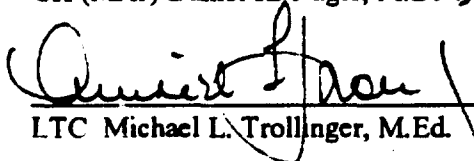
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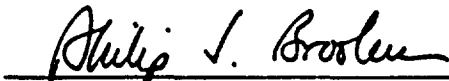
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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

A SITUATIONAL MILITARY ETHIC by CPT (P) G. L. Walters,
U.S.A., 108 pages.

This study investigates military moral problems from the perspective of situation ethics. It explores the feasibility of a situational military ethic using the supreme moral imperative of "universal concern" which underlies all moral action and from which all principles and rules derive their worth. The study defines the situational military ethic, and compares it to other ethical approaches, focusing on battlefield dilemmas and close comparison to the Professional Military Ethic (PME).

The study concludes that only "universal concern" has intrinsic value in application to ethical matters. It is found that as military members we are situational ethicists in practice if not in thought. Laws, rules, ethical codes and values can help shed light on moral matters, but in the end universal concern decides what is right. An improved understanding of situation ethics and how moral choice sometimes rightfully diverges from established norms will help resolve moral difficulties. Despite these findings no change in the PME is warranted due to the difficulty in initiating the moral awareness required to operate the SME, and that a reasonable compromise is possible and actually exists between the PME and SME.

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Thanks once again to Heather, Lindsay and especially Denise who are unquestionably the best parts of my life and the main reasons I wish to "get things right."

Finally, I apologize to all women for the masculine slant of these pages. To say it was the nature of the subject would be woefully inadequate, and more importantly, untrue.

TABLE OF CONTENTS

	Page
APPROVAL PAGE.	ii
ABSTRACT	iii
ACKNOWLEDGEMENTS	iv
CHAPTER	
ONE. The Undue Moral Dilemma: An Introduction of Situational Ethics.	1
TWO. Literature Review	31
THREE. The Alternative Moral Systems	46
FOUR. Moral Choice Cases and the Application of Situation Ethics	74
FIVE. A New Perspective: Conclusions and Recommendations	99
BIBLIOGRAPHY	106
INITIAL DISTRIBUTION LIST	108

CHAPTER ONE

THE UNDUE MORAL DILEMMA: AN INTRODUCTION

It is well that war is so terrible--
we would grow too fond of it.

Robert E. Lee

To say that war is a difficult arena in which to make moral choice is to understate. In few other human endeavors does action reach such extremes, or man's freedom to decide his and others' courses confront such awful forks. At many of these forks await moral dilemmas about the right and the good about man dealing with men on the battlefield. In the realm of right and wrong, good and evil, war must surely be the supreme test of man's attempt to make moral choice. This study is about moral choice. It is a study about moral choices from the perspective of soldiers making choice under battlefield conditions.

On the battlefield it is not enough for a soldier to face choice and vaguely understand the choice may be right or wrong and that good or evil may result. More than any other human activity, moral choice deserves to be examined with philosophic rigor. If intuition, a seemingly common ethical tool possessed by all, is something less than a

method regarding moral choice, then we still need a synthesis that accounts for ours and others' experiences, makes sense of abstractions like value, honor, truth and good, and generally organizes these elements into a moral system that helps to make choice. Moral systems through which to filter ethical data and assist with moral choice abound. There is also no shortage of military ethical writings dealing with battlefield decisions.

Purpose

So why another work on military ethics? The answer is three-fold:

Considering the complexity and importance of making moral military decisions, no stone should go unturned in the search for what we ought to do in the face of difficult choice. In that vein this work will take an in-depth look at situation ethics from the military viewpoint. Situation ethics has not received its proper regard among military ethicists, a neglect largely undeserved as the ethic offers a rational approach to moral choice. With a few exceptions among theologians and philosophers, and aside from the immediate few years after Joseph Fletcher published the book Situation Ethics: The New Morality (1966), not many have paid much heed to the situational ethic. The primary reason for this in the military is that the term "situation ethics" has been used in ethical training without a proper

understanding of its tenets and methodology. Part of this misunderstanding results from a shying away from examining the philosophic underpinnings of ethics. This work humbly attempts to correct the problem.

Second, an ethical system should be "totalist," covering the full range of human moral activity. For example, the explanation for professional role differentiation, such as the confidentiality of media sources, or lawyer- and doctor-client relationships generally in conflict with other laws, soldiers killing when killing is generally forbidden, etc., should exist internal to the system and not require exceptions or outside help. The ethical system should also be totalist in that it is universal and practical, appealing to everyone possible.

Lewis Sorley writes in his essay, "Duty, Honor, Country," that what we have to do is to create a secular morality, acceptable to the non religious, that accommodates itself to what man will actually do, which is to say, persists...in the face of imperfection."

The word "accommodates" has implications for situation ethics' claims to being a final truth regarding morality. The ethic embraces the implied tentativeness, going forward in practice with a confident and upbeat skepticism.

Further, and third, that the current professional military ethic (PME) is incomplete and resultantly, and often mistakenly, supports decisions different from those actually made on the battlefield. The PME is based on a set

of values which if followed define the man of good character, but do not adequately resolve the more difficult moral issues.³ The PME offers little in terms of a system beyond legalism; that is, it begins and ends by asking what is the rule? The answer is often morally unclear and at odds with our ethical intuition. A case illustrating this last point follows shortly.

If the above are reasons for the paper, there are, too, reasons worth mentioning for which the work was not written. The values expressed by the PME are desirable and it is not a goal of this work to undermine these values. These values must continue to be taught and honored within situational limits. Neither is it an objective of this work to undermine "the law." Situational ethics is a respecter of the law. It seeks to account morally, however, for those cases that demand disobedience of the law in the heat of action, yet submission to the law in the aftermath. Socrates would understand this.

The thesis of these pages is to show that we as military officers are really and rightly situational ethicists. Though we may not talk and teach situation ethics, we do, in the main, practice it. It is also the ambition of this work to show that situation ethics is a viable, if difficult, moral system. As situation ethics is largely misunderstood, it will be necessary to carefully

define the ethic as part of the demonstration. Situation ethics is not, as is often thought, a method of expediency that forsakes the hard right if the situation allows it. Rather it defines the right, sometimes hard, sometimes not. From the cases in chapter four, we will see situation ethics can be demanding. We will also look closely at the place of rules, guidelines, precepts, laws, etc., in the context of situation ethics.

The Problem

The following case is illustrative of the type dilemma that confronts military leaders on the battlefield and which serves as the impetus for this work. It is an undue moral dilemma. The scenario is from Colonel James McDonough's book Platoon Leader (1985). In this scenario Colonel McDonough is an infantry platoon leader in Vietnam. At the time of the following "moral dilemma," he and his platoon are on patrol. Nhan is the platoon's Vietnamese interpreter. One day a stay-behind ambush element got into a sudden firefight. In the exchange, one American had been hit in the leg and was bleeding profusely. As I approached the action with the rest of the patrol, intending to flank the enemy, I noticed that the base of the hill we were about to ascend was heavily mined. A frightened farmer crouched in the grass nearby.

'Come here, papa-san!' I called. 'Nhan, ask him how to get through this stuff.' The farmer shook his head in dismay.

A call came on the radio: 'Damn it! If we don't get Archibald out of here fast, he's going to bleed to death!'

'Ask him again, Nhan,' I ordered.

Again the farmer refused, his eyes widening in fear. I took out my knife. 'Nhan, tell him I'll kill him right now if he doesn't tell us.'

I had crossed the line.'

Colonel Anthony Hartle comments upon this scenario in his book Moral Issues in Military Decision Making (1989).

He writes,

Lieutenant McDonough reached the group under fire and evacuated the wounded man, whose life was saved by the action. Does that justify his treatment of the farmer? In some instances, can we justifiably violate the laws of war in order to achieve specific ends? If so, how can we identify such circumstances? Such situations, repeated with terrible frequency, corrode the soul and warp moral sensibilities.⁵

The philosophic particulars interest us less for the moment than our intuition. As already mentioned, intuition is an inadequate moral method, but it can be reason for pause when a situation strikes us as odd or wrong. So let intuition now generate the question, "wherein lays the 'soul corroding' moral dilemma of McDonough's case?" Who would have decided the dilemma differently by not "stepping over the line"?

This is a moral dilemma in the accepted way of using the term--there is a moral choice to be made in which the alternatives are both wrong by accepted standards, or are both right and necessary, but one alternative, and only one,

can be done. Choosing badly constitutes an immoral act. It is a moral dilemma from a *legalistic* point of view.

In this case McDonough was faced with threatening the Vietnamese farmer's life to coerce him to lead the patrol through the minefield, or not, the latter probably leading to more casualties. Clearly it is wrong by virtually all accepted moral standards to threaten another's life under "normal circumstances." It is also wrong not to take steps to prevent the loss or degradation of life when it is in our power to do so.

McDonough chose to threaten the farmer's life, and whether he would have followed through with the threat or not makes little difference for our purposes here, though all might agree it would have served no moral purpose to kill the old man. What does matter is that the wounded soldier was evacuated successfully, the patrol passed safely through the minefield, and afterwards the farmer returned to his family and fields, if perhaps a little shaken. This was McDonough's intention. It was a reasonable expectation, though not the only imaginable outcome. A situationist, then, answers Hartle's question, "Does that justify threatening the farmer?" with an unequivocal "yes." The "situation" strikes us as right in a way in which such situations can only strike us as right during war, or in other extreme contexts. To have suffered additional

casualties due to entering the minefield blindly and righteously would have been, to speak figuratively, "moral high ground" not worth occupation. The action and result as here considered feel right, though if we were to submit the action to a legal review McDonough would be found guilty of violating the laws of war:

270. Prohibition of Coercion.

a. *Treaty Provision.*

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties. (Geneva Convention, article 31.)

b. *Guides.* Among the forms of coercion prohibited is the impressment of guides from the local inhabitants.⁶

What should he have done? Situation ethics will argue that he took the proper action. It will not argue that the law was wrong. Situational ethics will deny the case "soul corroding" status in a moral sense, though it will admit the situation was difficult in humanitarian terms. It is hoped that this will be seen as more than hair-splitting by the end of the thesis. The difference, in other words, is that it is not the moral dilemma that creates the anguish, but rather the exigencies of the military requirement. The rule bends (or is cast aside) rather than the situation bending to fit the rule or standard.

McDonough's situation was always intense, but it became a moral dilemma in the technical sense when he

considered using the old man as a guide as an expedient way to pass through the minefield without further casualties. What "soul-corroding" equation, though, shall we apply to threatening the old man, or using him as a guide through the minefield? Perhaps even, when looked at in this light, the old man presented McDonough with the best solution to his problem in terms of general concern. There are more things than moral dilemmas to injure a man's spirit. A central concern of this work will be the undue moral dilemmas that we are expected to anguish over, the whole idea being represented well by expressions such as "the lesser of two evils." If McDonough's "soul" was damaged by the difficulty of his decision, it may be because he became entangled in a legalistic approach to moral decision making.

And if Hartle meant no more than war is full of difficult situations, there would be little room for argument. Later, however, Hartle will introduce as foremost in moral choice the rule of individual rights, and McDonough's action is not as morally clear to an ethicist invoking a prime rule of individual human rights as to the situationist viewing the case in terms of utility and universal concern.

It is these latter two terms that define the situational ethic: "utility," as in utilitarianism, and "universal concern" as a prime directive, or supreme moral

imperative (SMI), to be used in making moral choice. Situation ethics may not have made McDonough's decision easy, but it would have provided a sound and comprehensive base from which to make the decision. The ethic would balance the farmer's right not to be coerced, the leader's desire to avoid further casualties, and the wounded soldier's right to be evacuated, with something less than soul-corroding impact. Now we will turn to more fully explaining these concepts, and situational ethics in general, and as the thesis progresses, how a situational ethic might be a situational military ethic (SME).

An Introduction to Situational Ethics

It is difficult to speak of situation ethics without also speaking of Joseph Fletcher, author of Situation Ethics: The New Morality (1966). Fletcher comprehensively detailed the method, presuppositions, propositions and applications of one instance of a situational ethic, and his work has come to define the ethic in its method if not in all its particulars. While this thesis will differ with Fletcher on some important matters, it accepts his work in the main and largely adapts Fletcher's situation ethics to the military context; hence the title, "A Situational Military Ethic."

Foremost in the method of situation ethics is the use of the supreme moral imperative (SMI). The case for an SMI

is simple. Why do persons recognize values, such as truth-telling, not to harm others, etc.? Find the reason that causes persons to honor moral values and you will find the SMI. Once one finds the SMI, provided of course that it exists, then he has found the value from which all the others are derived directly or indirectly. Situation ethics insists that the SMI both exists and is recognizable. The SMI, then, is the single root value that has intrinsic moral worth. For Fletcher that value is Agape, or Christ-like love.

Agape is a heady versus an emotional love; it is a love for humankind, not philos or eros. It answers the question, "Why do we honor moral values?" In moral dilemmas, Fletcher, a Christian apologist, asks always, "What is the loving thing to do?" Of course this raises as many questions as it answers and requires further explanation.

A feature of the SMI is that it avoids internal conflicts among values when applied to moral issues. There is rightly only one value with intrinsic worth in a given dilemma, because only one value has intrinsic worth. This is not to say that situation ethics frees us of moral dilemmas. Moral dilemmas still exist, but they now take on the form of a distribution problem rather than a problem of value conflict. If the "concern" of universal concern is

for persons, how does one decide moral matters when the interests of persons conflict? Situation ethics combines with utilitarianism to give the answer. We will examine the problem further before the end of this chapter. First, an examination of the SMI is in order.

Is Agape the only possible SMI? Considering the heterogeneous makeup of our army, is Agape, a decidedly Christian term, a workable SMI, even informally, in a military situational ethic? The answer appears to be no for both questions, for both simple and complex reasons.

Fletcher would agree that Agape is not the only possible SMI, as the following passage illustrates:

From this point on we will be speaking of Christian situation ethics, even though many of the things said about it apply fully as much to others whose method of decision-making is, like ours, both nonlegalistic and person-centered.

But if Fletcher will allow for another SMI, that SMI will still be an expression of the principle of benevolence. If Fletcher might say that Christ is at the center of Agape, one might argue that Christ abstracted from Agape would yield benevolence. The Christian and humanist must venture into metaphysics to draw and settle their differences on this point.

The answer to the second question above--Is Agape a possible SMI in a situational military ethic?--is simpler. As some are offended by the simple abbreviations "B.C." and "A.D.," there will be many who could not openly embrace the

Christian concept of Agape other than in an abstract manner. It is this abstract core though that is the principle of benevolence and which rests at the center of situational ethics. While there would be some who could abide Agape in its spirit without subscribing to Christianity, there would many who could not. Even for those who could agree with its merits as an SMI, they would be agreeing to the "benevolent core" of Agape, and there would be a degree of filtration taking place with each situational calculation, for situational ethics will require calculations. Agape must be relegated to an ethical tool that the Christian can wield as an SMI in a Christian situational ethic. This is because an assumption in Fletcher's work is Christian faith. Without this faith, Agape is problematical as an SMI.

No situational ethic can hope to find the perfect SMI if that means pleasing everyone. Challenging that the SMI even exists is an attempt at refutation of the ethic. Yet there may be a core truth that Agape strikes at, and which sounds a resonant chord in enough other ethical systems, that a universal, or certainly more universal SMI can be hypothesized. If one accepts that the theme of moral conduct is the governing of relations among men, it is not difficult to sense a concern for man (writ large) at the center of ethics. Though there are metaphysical aspects of Agape not present in an SMI of "universal concern," the

latter captures the salient element of love for mankind present in Agape. If it lacks the example of Christ as illustration, it still responds to the "God-sized blank in the soul of man." Universal concern, then, is the SMI put forward in this thesis as not only appropriate for a universal situational ethic, but as especially adaptable to a situational military ethic.

In short, universal concern is the root value of moral choice. It is the only value with intrinsic worth; all other values will derive their worth from people applying universal concern. As these other values are derived from the SMI, they possess only extrinsic worth, ceasing to be valuable at all when not desired by a person, or desired by a person without universal concern.

Presuppositions

There are four presuppositions requiring examination before going further. Fletcher, as already alluded to, has done the work in this regard and a summary of his analysis briefly follows.

Pragmatism

Pragmatism means the system must work. In the case of this thesis, situation ethics is nothing if it does not work. It is the pragmatism of William James. James writes, A pragmatist turns his back resolutely and once for all upon a lot of inveterate habits dear to professional philosophers. He turns away from

abstraction and insufficiency, from verbal solutions, from bad a priori reasons, from fixed principles, closed systems, and pretended absolutes and origins. He turns toward concreteness and adequacy, toward facts, toward actions, and toward power.⁹

Important to understand, as Fletcher points out, is that Pragmatism is not a moral system. If the pragmatic is what works in terms of means, it remains to be said to what end. Fletcher is less clear here than usual as he puts it this way:

Whereas classical ethics and aesthetics treated the good and the beautiful separately..., pragmatism lumps them and the cognitive all together, all three, under one broad umbrella--value. This puts the ethical question in the chair, at the head of the table.... To be correct or right a thing--a thought or action--must work. Yes. But to what end, for what purpose, to satisfy what standard or ideal or norm? Like any other method, pragmatism as such is utterly without any way of answering this question.⁹

Situation ethics boldly embraces expediency (until it is associated with doing what's easy). Stated conversely, pragmatism denies the abstraction that is unsuccessful.

"From each according to his abilities to each according to his needs," is an appealing system of economics. It corrects in theory many injustices and imbalances. Yet it fails in application. Sorely's remark previously quoted applies here; our morality "must accommodate itself to what men will actually do, which is to say, persists in the face of imperfection." This is the spirit of pragmatism.

Relativism

Yet, upon close examination, we experience some discomfort when Fletcher speaks of the good being encompassed within pragmatism, as he does in the passage above. If we can agree that pragmatism is a method that "works," and we wait to say to what end, then how is the good entailed here? Philosophically speaking, the problem of "the good" has been one and the same with "the end."

The criticisms put forward by Victor Grassian in Moral Reasoning (1981) are valid. He writes,

Concern for others does not stipulate the direction this concern should take until we ask what in general is the good for human beings; this ultimate question is, however, never tackled in Situation Ethics.¹⁰

The answer lies in something closely akin to a circle.

The presupposition of relativism puts forward that choice is contingent. It must be relative to something, in this case, Fletcher would say, Agape. This fills out the equation begun by pragmatism. If pragmatism is a method, and a means without an end, then relativism is the connection to the end. Now, though, what does this mean? Fletcher claims to know the ultimate good for man--Agape, and the situationist would agree that the SMI, whatever it might be, is the ultimate good. Yet the question, "Is this the ultimate good or the supreme moral imperative?" deserves to be answered. Fletcher will insist that love is a predicate and not substantive. Here there is agreement. If Grassian could

put the question to Fletcher directly he might ask, "It is well enough and good that you regard benevolence so highly, but when you are showing it to others, how do you determine what is loving? To what end are you advancing the recipients of your concern toward?" Grassian writes,

The principles of procedures by which love is to be distributed in a just way are, however, never hinted at by Fletcher. Are we, perhaps, simply to intuit how to weigh the conflicting needs of individuals so that love may be equitably distributed? Fletcher is characteristically silent, simply thrusting the anchorless concept of love toward us in a sea of rhetoric and leaving us to navigate for ourselves."

Fletcher might reply: "Grassian, you miss the point. If I am silent on this subject, I've at least said why. You appear to have missed some pages in the first chapter of

Situation Ethics":

We need only recall how the dean of Anglican moral theologians, Bishop Kenneth Kirk, ended his effort to be a casuist, a practical moralist. Pointing out that at most the number of unalterable principles must be "very small," Kirk admitted that "if we followed out this line of thought to the end (as has rarely been done in Christian ethics), there could strictly speaking be only one such principle. For if any principle has an inalienable right to be observed, every other principle would have to be waived if the two came into conflict in a given case." Exactly! Christian ethics has indeed failed to follow up that line of thought! But situation ethics picks it up. It holds flatly that there is only one principle, love, without any prefabricated recipes for what it means in practice, and that all other so-called principles or maxims are relative to particular, concrete situations! If it has any rules, they are only rules of thumb.

Kirk mourned further, that "it seems that we have reached a point at which the whole ambitious structure is revealed as a complete futility. Every man must decide for himself according to his own estimate of conditions and consequences; and no one can decide for him or impugn the decision to which he comes. Perhaps this is the end

of the matter after all." This is precisely what [my book] is intended to show."

For Fletcher and situationists, the answer to the question of what is the highest good, is Agape, universal concern, benevolence, or love of mankind.¹³ To the question of, toward what is the love directed, the answer is, it depends.

Today truth-telling, for example, may be the concerned thing to do, but not tomorrow. Truth-telling lacks intrinsic worth: Suppose a man approaches another man who knows him and in a fit of rage sincerely and convincingly speaks of committing murder of yet another man in an act of revenge. Wielding a gun and thinking the second man knows where the third is (which he does), asks for the third's location. For the second man to refuse the information probably means being shot himself considering the first man's emotional state. To respond truthfully to the question probably results in the intended murder. With the exception of the extreme legalist who would martyr himself, we would agree that a lie is the right thing to do--either misleading the gunman or pleading ignorance would be acceptable. The situationist, acting according to the SMI, lies for the good of himself, the intended victim and the gunman. The situationist would argue that it would not be benevolent to tell the truth in this situation. Rather it would be blind obedience to a rule, truth-telling, which has no intrinsic value.

Positivism

Whatever aim the situationist seeks to achieve, whether it be Agape in accord with God's commandments, universal concern in a humanistic way, or, in comparison, hedonism in a purely utilitarian approach, the end is posited. It is a, philosophically speaking, skeptical position. This is especially important for Fletcher for it puts him down hard on the side of "thinking supported by faith," opposed to "faith supported by thinking."

Situationists will deny that there is logical proof for any system, be it ethical, aesthetic, or one dependent upon a faith proposition. This is a well-explored area of philosophy--epistemology--which evokes the names of men like the Saints Augustine, Anselm and Thomas, like the philosophers, Descartes, Berkeley, Hume, Nietzsche, Kierkegaard and the logical follower-ons of existentialism like Heidegger and Sartre. The point is that whatever the end desired for benevolence, whether it be a philosophical ultimate end, like hedonism, or a short-term "good" for some other, like a pleasant feeling, it will be posited by the actor and not logically provable.

Personalism

The presupposition of personalism states that ethics involves human relations. Fletcher puts it as: "The legalist is a what asker (What does the law say?); the situationist is a who asker (Who is to be helped?). Situational ethics are personalistic."¹⁵ Situationists do not claim a unique position in this regard; there are other systems which ask the same person-centered question. (Ethical egoism comes quickly to mind.) Fletcher emphasizes the personalistic approach deliberately at the expense of "the law." Fletcher does so in the spirit of the New versus the Old Testaments of the Bible, wherein the law, though still valid, is transcended by Christ, but a humanist might make the same emphasis claiming there is no other, and certainly no higher other, than the "who" in the question "who is to be helped?" For the humanist, the laws (rules, precepts, etc.) are nothing but instruments to be used to the good of man. Personalism is important to situational ethics, but is not unique. If the situational presupposition of personalism asks who, or which person, is to be helped, it remains for us to address the problem of deconflicting personal interests among several or many. In other words, if showing concern for one person or group conflicts with the good of another person or group, how is

the concern distributed? Here situational ethics answers the question by forming a coalition with utilitarianism.

Utilitarianism

We have already alluded several times to the moral system of utilitarianism. As a system utilitarianism dates back to the early nineteenth century with John Stuart Mill coining the word about one hundred and fifty years ago. Put simply the system seeks to cause the maximum good for the most people. For Mill the good was happiness; for his predecessor Jeremy Bentham, the good was pleasure. In modern terms, utilitarianism is spoken of often from a biological perspective in relation to survival of the species. With the good defined, utilitarianism is a complete system of morals. One performs a quantitative or, qualitative (and in some instances both) analysis of the branches of a given moral decision, and in the case of Mill, for example, calculates which choice will yield the most happiness for the most people; for Bentham, the most pleasure; for a biological utilitarian, the greatest degree of survival.

One may discern that there is little difference between the method of utilitarianism and situational ethics, and indeed, there are more similarities than differences. The criticisms of utilitarianism, particularly act-utilitarianism, apply precisely in the same way to

situational ethics. Without defending the statement for the present, saving that for chapter three, let it suffice to say for now, and in grammatical terms, that if in situational ethics, "love" is a predicate, as has already been said, and the object of love is dependent upon the situation, then in utilitarian ethics, the object is defined (as the good), and the method is left open as to how the good is achieved. Now, continuing with utilitarianism's criticisms, which are equally applicable to situational ethics. All of these criticisms are valid in some respect, but also answerable. The direct comparison, that is, the answer to these criticisms, will wait until chapter three.

Some Criticisms of Utilitarianism

The criticisms against utilitarianism come in many forms and not everyone agrees on what are especially the strongest. Two sources provide the first four criticisms. The first three are from Jacques P. Thiroux's Ethics: Theory and Practice, the fourth from Joseph Josephson's tract entitled Ethical Obligations and Opportunities in Business: Ethical Decision Making in the Trenches, and finally a general (Kantian) criticism of the utilitarian ethic which strictly questions whether persons can ever be treated other than ends.

First Utilitarian Criticism: Difficulty in Determining Consequences.¹⁶

This criticism states that it is difficult to determine what is good for others. Because the actor perceives the proposed solution as good for himself, there is no guarantee it is good for the object of the moral determination or calculation. Seldom can an actor ask the objects of his moral calculations what they think.

Second Utilitarian Criticism: The Difficulty of Calculating Each Situation.

This argument states it is cumbersome to treat each situation as unique, making no use of precedent. If the utilitarian, or situationist counter-argues that as experience mounts the method adapts itself more readily, or expediently, then the critic replies that the utilitarian has "hidden rules."¹⁷

Third Utilitarian Criticism: Difficulty in Education.

The critic asks "how does one begin to teach systematically a moral system that begins anew with each moral decision?" This is especially applicable to teaching children, but also applies to the uninitiated. The method may be passable for philosophers, but how universal is it otherwise?¹⁸

Fourth Utilitarian Criticism: Produces an "Ends Justifies the Means" Credo.

It is difficult to present this argument without comment in a work that defends situational ethics; nevertheless, Josephson writes:

The major shortcoming of this balancing theory is the ease with which it can be manipulated by self-serving rationalizations to produce *situational ethics* [his italics] and an "end justifies the means" credo which elevates expediency over principle.¹⁹

The passage serves to illustrate the misrepresentation of situational ethics as an overly reductive expediency even if it fails in the final analysis to represent a serious criticism.

Fifth Utilitarian Criticism: Punishment of the Innocent.

If there is a criticism against situationists and utilitarians that must be answered, this is it. Particular cases abound against both ethics taking this approach. We will look at least one case of this sort in chapter four. The argument comes in many different shades so to speak, one of the most common being that confronted by the bombardier in war. As he sights in on the military target from tens of thousands of feet, he knows that among his targets are innocent noncombatants. (The rule of double effect is central here; see chapter four.) His releasing of the bombs will certainly kill an innocent. The argument against utilitarianism is precisely that it defends the act as being

utilitarian, that is, by killing an innocent few, the war may be theoretically shortened and ultimately save many.

Even more poignantly, the utilitarian may advocate the deliberate killing of an innocent when the good of the many is served by the action. This is something different from the double effect, or collateral damage cases which involve the unintentional killing innocents. Consider a case such as faced by Peter O'Toole's character T.E. Lawrence in the film Lawrence of Arabia, when to prevent a destructive rift in his tenuous coalition, he executed a thief without a trial who had stolen from a member of another tribe. The summary execution was performed in this volatile situation (weapons drawn on both sides), in order to maintain the vitally important alliance between the thief's and victim's relatively backward tribes, and to stop further killing by what we might consider as barbaric reprisals, that is, an on-the-spot clash in the name of honor. How much would it have mattered if the thief was innocent? What was the role of reason in this case?

Assumptions

Two assumptions are salient and are made prior to writing this thesis. There undoubtedly others implied.

First, the military is a profession and a professional ethic applies. Depending on the expert consulted, military duty does not meet every possible

defining component of a profession (e.g., some argue that professions necessarily have customers and some consider that the military has none). A closely related assumption is that when discussing ethics, the military professional is an officer. While most generally think of commissioned officers in this context, this study does not draw the line, and would include warrant officers and most senior noncommissioned officers.

Second, this work assumes that man has free will and accordingly will avoid discussions regarding the existence of free will and related ideas such as determinism. No facet of moral philosophy is out of bounds for examination, but many are beyond the scope of this thesis.

Summary

By way of review, this chapter has presented the problem of "The Undue Moral Dilemma," that is, why tough decisions sometimes detrimental to other persons need not be "soul corroding." This is because decisions made using the moral imperative of universal concern are reasonably based with the good of all persons involved, emphasis on the many, in mind. Bad effects which may attend some moral decisions are not necessarily morally bad, but may be "cosmically" so. Restated this simply means that situations requiring moral choice often confront moral actors in which they had no foreseeable contribution to and in which their action or

inaction will unavoidably produce bad consequences. Situation ethics chooses to avoid expressions such as "the lesser of two evils." If a moral decision necessarily ends with bad results, the decision that lessens the bad results is not immoral. The difficult moral decision may begin as a dilemma, but does not end in dilemma. The moral actor calculates consequences to the foreseeable limits and acts at the moment of decision (Kairos). Done well the decision is right and moral regardless of the actual consequences. The undue moral dilemma results from granting "rules" intrinsic value without proper regard for the welfare of persons, anguishing over the conflicting rules, and after the decision lamenting the necessary resulting evil.

In situation ethics only universal concern has intrinsic value and all rules, precepts, principles and the like must be constantly evaluated against its standard. The SME recognizes that rules are designed with good ends in mind, and serve a meaningful role in categorizing experience in the form of precedents which are used to guide conduct. These rules will usually hold -- but only because universal concern will usually be supported by the rule. The rule's value is extrinsic, derived from universal concern.

The chapters ahead will build on this introduction to the SME. Chapter two will present a review of the literature regarding approaches to military ethics and

present what experts in the field of ethics have to say about situational ethics in general, and particularly how it may be applied to military ethics. Chapter three will be a comparative analysis. The goal of this chapter is to arm readers with a rudimentary understanding of competing systems so they may evaluate themselves the strengths and weaknesses of the SME as it is presented by cases in chapter four. These cases in chapter four focus on the broad range of battlefield action possible focusing on the more difficult moral matters. Finally, chapter five presents conclusions regarding the ethic.

Endnotes

¹Joseph Fletcher, Situation Ethics: The New Morality (Philadelphia: The Westminster Press, 1966).

²Lewis Sorley, "Duty, Honor, Country," in War, Morality and the Military Profession, 2nd edition, ed. Malham M. Wakin (Boulder and London: Westview Press, 1986): 142.

³The PME values are spelled out in FM 100-1, FM 22-100, and DA Pamphlet 600-68. We will talk more about these values later; they are: 1) **Institutional**--Loyalty, Duty, Selfless Service, and Integrity; 2) **Personal**--Commitment, Competence, Candor, and Courage. See Chapter Three.

⁴James R. McDonough, Platoon Leader, (New York: Bantam Books, 1985): 139.

⁵Anthony Hartle, Moral Issues in Military Decision Making, (Lawrence, Kansas: The University of Kansas, 1989), 3.

⁶U.S. Army, FM 27-10, The Law of Land Warfare, (Washington, DC: Department of the Army, 1956): 107.

⁷Fletcher, 56.

⁸William James, Pragmatism, quoted in Fletcher, 43.

⁹Fletcher, 42.

¹⁰Victor Grassian, Moral Reasoning: Ethical Theory and Some Contemporary Moral Problems, (Englewood Cliffs, New Jersey: Prentice-Hall, 1981): 118.

¹¹Ibid.

¹²Fletcher, 36-37.

¹³"Benevolence" will be the term used when speaking to a blended Agape and universal concern. The term, one suspects, doesn't say enough for Fletcher, and is too passive sounding otherwise. Yet it captures the core meaning of Agape and universal concern.

¹⁴Fletcher, 50.

¹⁰Jaques P. Thiroux, Ethics: Thory and Practice, 4th edition (New York: Macmillan Publishing Co., 1990): 45.

¹¹Ibid.

¹²Ibid, 45-46.

¹³Michael Josepnson, Ethical Obligations and Opportunities in Business: Ethical Decision Making in the Trenches (Marina del Ray, CA: Joseph and Edna Josephson Institute of Ethics, 1990): 15.

CHAPTER TWO

LITERATURE REVIEW

The literature pertaining to ethics and even military ethics is considerable. The literature of situation ethics is much less. Situation ethics came to the forefront of ethical thought and literature for a short period near the end of the 1960s. It is no coincidence that this is the same time that Joseph Fletcher's book, Situation Ethics, was published in this country. Situational thought in regard to ethics, however, goes back much further. While this is not the place to retell the history of situational ethics, it does seem prudent to point out that situational ethics traces its roots back through some of the brightest and best-known names in moral philosophy. Marcus G. Singer, writing in The Academic American Encyclopedia drops the following famous names (the entry on situation ethics is given here in its entirety):

Situation Ethics, which has come into prominence only recently, claims that the morality of an action depends on the situation and not on the application of a law to the case. This is a form of particular-case intuitionism and is opposed to utilitarianism and Kantianism as well as the divine-command theory. The original idea can be traced back to Aristotle, who held that the decision in a particular case "rests with perception," and the idea can be found in Ross (an

intuitionist and nonnaturalist) as well as Dewey (a naturalist and consequentialist).

Not only is this a diverse list of distinguished names, but it is a good representation of the many varied ways in which situational ethics is dealt with by ethics commentators.

One must very nearly be a moral philosopher to make sense and connection among the widely differing approaches to describing situational ethics. Singer places situational ethics in a subset belonging to intuitionism and opposed to utilitarianism. While the latter is true in the sense of the difference between situational ethics and utilitarianism already described in chapter one, the former is true in the sense that Fletcher does not define the ultimate good in a philosophic sense (such as does the concept of hedonism), and he sounds very much like an intuitionist when he speaks of predicates. Intuitionists are often criticized for their descriptive fixations, opposed to offering genuine moral reasoning and prescription. Fletcher, however, would not subscribe to a theory of "self-evidence of our obligations," as put forward by H. A. Prichard, and written upon and analyzed by G. J. Warnock in Contemporary Moral Philosophy (1967). It remains for chapter three to examine what Fletcher has to offer beyond "love as a predicate."

Not everyone chooses to place situational ethics in with intuitionism. Gerald Runkle, in Ethics: An Examination of Contemporary Moral Problems (1982), places Fletcher in a

long line of distinguished theologians, among whom number Jesus, Saint Augustine and Thomas Aquinas. Runkle goes on to describe situational ethics exactly as would Fletcher, without agreeing or disagreeing with its conclusions.

Many others are not so pleasantly inclined. Richard Gabriel, in To Serve With Honor, castigates situational ethics in the plainest of terms in chapter two. Yet one might conclude that Gabriel, like Fletcher is philosophically eclectic. Gabriel quashes the notion that ethics are either relative or absolute (he believes situational ethics represent the former in many mistaken debates, which seems to be right). All ethical systems must consider the situation in which the must be made, he says, because

the notion of *justitia fiat pereat mundus* (let justice be done, even if the world would perish) is not only a very difficult one to observe, but is also likely to lead to great moral problems in most of its applications.²

Gabriel goes on to point out that "the very nature of ethics involves discovering what one ought to do under particular circumstances."³ He is right in saying this is not the argument between situationists and any other ethical system. He is also precisely right about why situational ethics cannot serve as the basis for a code of military ethics, though this hints of beating a straw man as no one other than Gabriel has proposed such a thing. The following

is at the heart of Gabriel's diatribe against situational ethics:

What, then, are situational ethics, and why isn't it possible for a code of military ethics to be situational in character? Situational ethics is the ethical theory which affirms that basic judgments about what obligations ought to be observed are always purely particular ones [here and throughout the passage the italics are Gabriel's]. Ethical obligations are always relative only to the particular set of empirical circumstances in which one finds oneself at the moment. Accordingly, each situation is unique, and the individual must decide what to do precisely on the basis of the information that he has available to him at the moment. There is no attempt to make the circumstances relevant to any general ethical precept, or, more importantly, no general ethical precept is relevant to any given set of circumstances.... In a sense, the individual approaches each set of circumstances in which he must act as an ethical *tabula rasa*, lacking any guiding ethical precepts.'

Chapter three will address Gabriel's arguments in detail, though his arguments are far from the best that can be made against situational ethics.

For now, one should note that Gabriel places a curious emphasis on "at the moment" above, as though this were a serious limitation to be faced by the situationist. If situational ethics shares at least one element with all systems of ethics, this is it. For Fletcher, the concept is referred to as *Kairos*, or decision point. Situationists do regard the decision point as important, but not in a manner that would inhibit the use of information at the decision maker's disposal, but rather to emphasize that moral choice cannot be (usually) "researched," and that moral decisions

will not be perfect. That moral rightness hinges more on what might be called reasonably foreseeable consequences than actual consequences underscores this point. This is to say that a consequentialist system need not ignore the moral actor's intentions. Only a very rigid consequentialist system would see it otherwise, and such a system would appear not to exist.

Gabriel will go on to argue strongly for a military code, invoking the names of prominent military leaders and writers in his cause. In his book, chapter five is dedicated to the issue and the lead section is titled "Advantages of a Code." He relies heavily on former Army Chief of Staff General (Ret.) Maxwell Taylor to make the argument. Gabriel goes on to formulate his own military code. More will be said about codes in chapters three and five. Codes are not anathema to the situational ethicist as Gabriel and others would have their readers believe.

Last, Gabriel argues that a common problem in the past for many military ethicists is that they want the ethical system to be totalist. If Gabriel is right that this view is a mistake, then this work repeats the mistake. Gabriel argues that the military has intended well in attempting to make itself an ethical institution, but has been confused in the effort partially by,

a tendency to confuse the ethics of the profession with the ethics of the good moral life. Military commentators have tried to make their ethical precepts

totalist in nature, developing a set of professional ethics which are meant to extend not only to the military man's professional role but also to his life outside the profession.⁵

Situational ethics gladly proposes to do just what Gabriel accuses many military commentators of doing, creating a totalist system.

Morris Janowitz, for one, will disagree with Gabriel on this last point. Speaking of "The Future of the Military," and blurring the lines between the day-to-day functioning of society and the military, he asks "how far will this reintegration go? Not, I am sure as far as a complete merger. The special nature of the military calling will persist...."⁶ While Janowitz recognizes a "special nature" involving the military he is decidedly against Gabriel's strong language, implying firmly that the military of the future is moving toward a totalist approach, not away.

Neither would Max Lerner agree, writing in his essay "Shame of the Profession," he writes, [where is the sense of wholeness. The worst thing that has happened to professionals has been the divorce of [professional and personal values]."⁷

Colonel Peter Stromberg, Malham Wakin and Daniel Callahan have more to say on the above issues of totalism and the military code. With regard to the totalist

approach, they write in The Teaching of Ethics in the Military (1982),

Professional military ethics, like professional ethics in other fields, is a subset of ethics distinguished not by attention to a particular moral theory, but by the problems and circumstances peculiar to the military professions.⁹

Situational ethics would agree. What separates the military from society in the ethical realm is the nature of its situations, nothing else. The actor in the military arena does not respond to a different moral theory than his civilian counterpart. One means of evaluating an ethical system should be to ask how well does it answer to the full range of human activity. If the system cannot address events on the battlefield for any reason, then it is incomplete.

With regard to the code, perhaps we can infer something from that Stromberg, Wakin and Callahan never mention one. Rather if one considers that the issue often reduces to an argument between those who argue for a code and those who argue that the code is out of place and of little use in an endeavor that must be governed by careful analysis and systematic thinking, perhaps we can determine where Stromberg, Wakin and Callahan stand by examining their five goals for the teaching of military ethics.¹⁰ The issue is of some importance because the SME will be indifferent to (not against) any military code of ethics. It is of some

use to show that the SME does not stand alone in this indifference.

The five goals presented in The Teaching of Ethics in the Military are:

- Stimulating the Moral Imagination. This includes, according to the authors, examining the full range of human activity, recognizing that human beings often "act stupidly or irrationally, [and] they often fail to live up to their own ideals."¹⁰

- Recognizing Moral Issues. The authors argue that much of the difficulty surrounding ethics stems from the complex nature of the subject, both in what constitutes a moral problem and how moral decisions affect outcomes.

In some cases, good moral conduct will turn on adherence to an accepted rule or principle. In other cases, rules or principles may not be clear, or are too general to be of help in resolving specific cases. At that point, the wise exercise of personal and professional virtue, and of reflective prudence, may be the key requirement.³⁸¹¹

The SME will answer that this last point is most often the case and offers help in showing how one determines what is virtuous and prudent.

- Developing Analytical Skills. Analysis of every type and at every ethical juncture is critical to the moral decision making process. The authors point out that

A common problem in morality--the classic moral dilemma--is that of trying to weigh and balance different moral rules, both of which ought to be observed.... Courses in ethics should provide some guidance in wrestling with dilemmas of that kind.¹²

This and the following two points are at the heart of the system argued for by Stromberg, Wakin and Callahan. The emphasis is on reasoned moral thinking, based on a sound moral education.

- Eliciting a Sense of Moral Obligation and Personal Responsibility. Part of the sound moral education is not only sensitizing the soldier to moral issues, but also inculcating in him the importance of his personal role in moral matters. The emphasis is on achieving a reasoned response from the informed moral actor.

- Tolerating--and Resisting--Disagreement and Ambiguity.

The final goal; it recognizes a point which this work has already raised. There will be "reasonable differences of judgment on the right thing to do."¹³ The authors rightly argue that we must accept some level of disagreement while simultaneously striving to cut to the moral truth in the matter.

Throughout these five goals there is a premium placed on the value of reason, being informed (sensitized and educated) and the recognition that there will be genuine and reasonable areas of difference between different moral actors. Some of these differences will be sophisticated, emanating from philosophically different bases, while other will be differences in agreement about how to apply

otherwise agreed upon rules or principles. In many cases the issues will be complex and will require a complex response. In dealing with these matters a code of ethics fits the moral actor's hands more like a club than the scalpel he needs. The argument in this work, and which might also be inferred from, Stromberg, Wakin and Callahan's neglect of the code, is that the code is really neither harmful nor helpful, hence the indifference toward it in this work, The Teaching of Ethics in the Military, and from the profession in general. The code does not address profound moral matters--military moral matters being among the most profound--with the required incisiveness.

Gabriel's challenges to the SME in the end are not serious challenges. His quick dismissal of the ethic, so easily done in the course of three pages, really flails away at arguments not belonging to situation ethics properly defined. Gabriel is most enthusiastic when attacking competing systems, but falls short in both his criticisms of those systems, and as importantly in his own arguments for a viable military ethic. A stronger and more oblique argument against situational ethics is made by Colonel Anthony Hartle in Moral Issues in Military Decision Making (1989).

Hartle never discusses situational ethics. What he argues for in his book is an account of our moral decision-making process which agrees with our military

experience in terms of: (1) "the exigencies of the profession," (2) "the fundamental values of American society," and (3) "the laws of war."¹⁴

Hartle comes to the issues concerning situational ethics in chapter five where he details the bases for the laws of war. As Hartle's argument is the most coherent against an SME, it is necessary to quote him at some length:

We commonly acknowledge that moral principles underlie and constrain the activity of members of professions such as medicine and law. Whether the same can be said of the military profession is another question, and one likely to provoke debate. Because American military professionals are committed to a particular set of values as part of their professional status, the question in their case becomes one of identifying the values and principles. But any military group, I will argue, that is committed to adhering to the laws of war is also bound by the two underlying humanitarian principles:

1. Individual persons deserve respect as such (HP1).
2. Human suffering ought to be minimized (HP2).

These two principles differ in their schemes of justification: the first does not look to the consequences of deeds but concerns itself with human rights, while the second invokes utilitarian considerations and does depend upon evaluation of the results of contemplated actions. I contend that HP1 has priority over HP2 in the formulation of the laws of war.¹⁵

There is no question but that HP1 precedes HP2 in the formulation of the laws of war. The laws of war were written to protect persons, and especially innocent persons (read noncombatants) and captured members of armed forces, so a focus on human rights is not surprising. Hartle,

though, in his book, argues that HP1 rightfully has priority over HP2 in military ethical matters. This is to say more than in the above quotation, and it is here, in his preferencing of HP1, that he parts ways with the benevolence of situation ethics.

Hartle's discussion of the potential conflicts between these two principles is central to the discussion of an SME, but for the moment analysis of his conclusions and case examples are saved for the following two chapters. It is enough for now to repeat that Hartle makes the strongest defense of the PME as the profession tends to think of it, and in actuality his book may be the only place where the PME is fully explained in coherent detail.

One of the central arguments to come is that nothing takes precedence over what Hartle calls HP2, as it will be shown HP2 is really a weak expression of the supreme moral imperative of universal concern. It then follows, and this work will further argue, that HP1 is derived from HP2.

The final work considered in this review contains an updated assessment of Fletcher's work from the view of the Episcopal Church. (Fletcher was a professor of Christian ethics at Episcopal Theological School when he published Situation Ethics: The New Morality.) It is The Christian Moral Vision (1979), by Earl H. Brill, from the "The

Church's Teaching Series;" it speaks for the Episcopal Church.

The book's final assessment of Fletcher's work, and with which this thesis agrees, but would state less strongly, is that Fletcher's work has forced a reconsideration of what is meant when one talks in terms of rules and principles, occupying a position between legalism and situation ethics on our earlier chart.

Not all principled thinking is legalistic. Much of it is motivated by the same concern for love that Fletcher finds central to the Christian life.

But the situationist approach, many would claim, tends to overemphasize the uniqueness of each particular ethical decision. In real life, it is only on relatively rare occasions that we find ourselves in situations that can be called unique. The same issues come up again and again in the lives of different people.¹⁶

Fletcher's work is still regarded as meaningful by the Episcopal Church and contributory to an advanced understanding of moral choice.

But the notoriety of the book--and even the attacks upon it--helped to focus the debate about ethical norms and strategies. As a result, many Christians have learned about the method of situation ethics and how it can be used in making decisions about responsible Christian behavior.¹⁷

In summary, Brill concludes that Fletcher's emphasis on uniqueness is unnecessary, and that principles must be regarded as the valuable guides that they are. He agrees that all principles and rules must serve love, as Fletcher says.

Substitute universal concern for love, admittedly a significant alteration for many, and this thesis propagates an ethic such as Brill writes about. The term Situational Military Ethic is kept, because if there is relatively seldom a unique case in human experience, a very large number of them will be found on the modern battlefield.

In this chapter we have seen that the debate surrounding situation ethics is heated and widely varying. The central and most important argument centers on the role of rules and principles. Situation ethics argues strongly against them having intrinsic worth. The emphasis is placed on the underpinning position of universal concern (love), with all rules and principles deriving their worth from its application.

Endnotes

¹Academic American Encyclopedia, volume 7, (Danbury, Connecticut: Grolier Incorporated, 1981): 251.

²Richard Gabriel, To Serve With Honor, (Westport, Connecticut: Greenwood Press, 1982): 51.

³Ibid.

⁴Ibid., 8.

⁵Ibid.

⁶Lewis Sorely, "The Future of the Military Profession," War, Morality, and the Military Profession, Malham M. Wakin, ed., (Boulder, CO: Westview Press, 1986): 98.

⁷Max Lerner, "Shame of the Professions," War, Morality, and the Military Profession, Malham M. Wakin, ed., (Boulder, CO: Westview Press, 1986): 138.

⁸Peter Stromberg, Malham Wakin, and Daniel Callahan, The Teaching of Ethics in the Military, (New York: Institute of Society, Ethics and the Life Sciences, 1982): 29.

⁹Ibid., 43-49.

¹⁰Ibid., 44.

¹¹Ibid., 45.

¹²Ibid., 46.

¹³Ibid., 47.

¹⁴Anthony Hartle, Moral Issues in Military Decision Making (Lawrence, Kansas: The University Press of Kansas, 1989): 54.

¹⁵Hartle, 71.

¹⁶Earl H. Brill, The Christian Moral Vision, (New York: The Seabury Press, 1979): 38.

¹⁷Ibid., 36.

CHAPTER THREE

THE ALTERNATIVE MORAL SYSTEMS

This chapter endeavors to fix the situational ethic in its place by demonstrating briefly the alternative moral systems next to which situation ethics works. It will be, though short, a somewhat technical discussion of those competing systems and ideas, necessary in order to fully arm the reader for the cases which follow in chapter four. The discussion relies heavily upon Jacques P. Thiroux's Ethics, Theory and Practice (1990).¹

In this chapter we will look at nonconsequentialist and eclectic moral systems which stand in contrast to the consequentialism of situation ethics, the first being those systems which ultimately measure moral acts by their outcome, and the second being those systems which combine elements, presumably the best, of various systems. In the following chapter we will examine battlefield cases and use some of these competing systems in comparing the SME.

In day to day moral dealings we seldom fall down wholly on one side or the other of ethical extremes, and a technical discussion of the subject will not only help to

clarify personal positions by better defining the differences between the two, but will also shed light on and contribute to an understanding of situation ethics. Included in our discussion will be Thiroux's eclectic ethical system which blends ethical approaches, and the reader may want to review Colonel Hartle's Humanitarian Principles numbers one and two discussed in chapter two, before going on to the cases in chapter four.

From a slightly different perspective, we will examine the extremes of systems for making moral choice as presented by Joseph Fletcher, ranging from extreme legalism to antinomianism (i.e., no law). Fletcher will argue that situation ethics occupies the middle and more reasonable ground between them.

We will also examine "just war" and the "double effect" with its treatment of innocents and noncombatants, as these are central issues in treating cases. In this chapter we will attempt to bring the discussion of the more difficult battlefield moral issues to a finer point in preparation for chapter four's case studies. In no case are the following explanations complete. They are intended to prepare the reader for the case studies which follow and provide enough information to allow him to critically examine the situational military ethic.

Nonconsequentialism

We begin with nonconsequentialism, defining it, and then following with three different, though not all inclusive, systems that fall under its broad definition--Divine Command theory, intuitionism, which was so summarily dismissed on the first page of this thesis, and Immanuel Kant's duty-based ethic. First, what is nonconsequentialism?

Thiroux, in his book Ethics, Theory and Practice, defines nonconsequentialism as,

theories of morality...based on something other than the consequences of a person's action.... The most important thing to remember when discussing the nonconsequentialist theories is that their proponents claim that consequences do not, and in fact should not, enter into judging whether actions or people are moral or immoral. Actions are to be judged good, based on some other (many nonconsequentialists would say "higher") standard or standards of morality. That is, acts or people are to be judged moral or immoral regardless of the consequences of actions.²

Below are summaries of the three nonconsequentialist systems mentioned above. They stand in contrast to the consequence-minded approach of situation ethics.

Divine Command Theory

First, and as pointed out as the clearest example of a nonconsequentialist system by Thiroux, is Divine Command theory.¹ Thiroux's cited case is that of Joan of Arc.

Joan, a young French peasant girl, heard voices, which she identified as belonging to Saints Catherine, Margaret and

Michael, guiding her to lead France in its fight for liberation from English dominance in the early fifteenth century. Her accomplishments were remarkable, among which were the relief of the city of Orleans after more than eight months of siege.

In moral terms, the outcome of Joan's actions are of no consequence, to say the least, in the face of divine authority. Proper action was dictated to her, and though it ultimately matters whether these voices were real or not, for our purposes the illustration is understood. God, for whatever reason, did not intervene directly in the dispute between England and France, but directed a young French girl to take up arms and fight. Joan obeys with no regard to the outcome -- God has commanded what is to be done. Though not a moral system, Divine Command theory is a clear case of nonconsequentialist moral choice.'

Intuitionism

More complex is the moral system of intuitionism. Intuitionism argues that reason is ultimately fallible in determining right and wrong and what must finally be relied upon is our intuition, our innate feeling of what ought to be done in a particular set of circumstances.

The arguments for intuition are that it precedes any other ethical system, that is, intuition predates all man's formal thoughts on the subject, and when reason fails in a

particular situation involving moral choice, that which decides is intuition. But what is intuition?

Above it was suggested that intuition is innate, built in, but there is much dispute on what is actually meant when one speaks of intuition. Some have suggested that intuition is only, if importantly, a rapid series of thoughts and associations too fast for conscious reflection. Clearly a problem exists as to what intuition is.

The most obvious problem is that not everyone intuitively "sees" the same moral choice in identical circumstances. As a system the ethic is unteachable in any way in which we ordinarily use the word "teach" (as intuitionism is taught over the course of a lifetime), and more importantly, intuition is not subject to objective verification or criticism. What one intuitively knows as right is closed to further questions except to determine what is or is not intuition.

As an ethical system intuition offers little common ground for discussion; most of its discourse is spent dealing with what it is we think we are doing when we make moral choice and in defining and exploring what is intuition. There is virtually no room for examining the correctness of moral choice once it is agreed the choice was made intuitively, and there is little more agreement on what is intuition. Intuitionism is a nonconsequentialist ethical

system; the act being considered by the moral actor is intuited to be right or wrong, and while in some instances the consequences of the action may be bound up in the act, ultimately the actor bases his action on his intuition considering, or not, the outcome.'

Kant's Duty-Based Ethics

The final example of nonconsequentialism is that of Kant's duty ethic. Kant's ethic is an example of rule-nonconsequentialism. Both consequentialism and nonconsequentialism can be either rule or act based. In the case of an rule-based theory, experience is categorized to produce rules for conduct. These rules vary from immutable and sacrosanct to malleable and merely advisory. Proponents of act-based theories will declare human moral action to be too complex for easy generalization. Each situation, actor and decision is unique and requires special calculations. Again, the degree of act-based theories varies, from a disregard of all rules to an acceptance of rules as general guidelines. The reader will probably notice that the extreme positions define the two approaches -- no rules versus only rules -- but that they might be regarded as existing on a continuum and coming together toward the more moderate central position on a line representing the continuum. In any case, we now look at Kant's rule-based duty theory; it is not a moderate position.

Kant's moral theory is based on two presuppositions or rules and acting out of a sense of duty. First, moral acts emanate from man's good will. Good will is exercised in accordance with established principles and without regard to consequences. Second, those principles are derived from the unique human power of reason, that is, the rules which good will acts in accordance with may be logically derived without regard to underlying metaphysical systems or without supporting empirical data.⁶

Regarding these rules, Kant introduces his own two rules by which all our moral efforts are measured. The first is the categorical imperative: "I should never act in such a way that I could not also will that my maxim should be a universal law."⁷ This rule states that whatever a man's action may be, if it were turned into a rule for human conduct, could it be universalized and made applicable for all men in all circumstances. Kant continues by way of illustration, "May I, when in distress, make a promise with the intention not to keep it?"⁸ Kant then begins to consider the disadvantageous outcomes resulting from always keeping a promise. In the "weighing" process that the actor then goes through, the calculations are difficult; if, for example, and as Kant might illustrate the problem, it is a promise to repay a debt, will the man's family go unfed if the debt is repaid immediately as promised, or if the

promise is suspended to feed his family, might not the eventual damage done to the man's credit do even more harm.

It is a difficult process and here Kant stops and says,

But it soon becomes clear to me that such a maxim [May I, when in distress, make a promise with the intention not to keep it?] is based only on an apprehensive concern with consequences.

To be truthful from duty, however, is an entirely different thing from being truthful out of fear of disadvantageous consequences, for in the former case the concept of the action itself contains a law for me, while in the latter I must first look about to see what results for me may be connected with it.... Would I be content that my maxim (of extricating myself from difficulty by a false promise) should hold as a universal law for myself as well as for others? And could I say to myself that everyone may make a false promise when he is in a difficulty from which he otherwise cannot escape? I immediately see that I could will the lie but not a universal law to lie. For with such a law there would be no promises at all, inasmuch as it would be futile to make a pretense of my intention in regard to future actions to those who would not believe this pretense or -- if they overhastily did so -- who would pay me back in my own coin. Thus my maxim would necessarily destroy itself as soon as it was made a universal law.'

The second rule in Kant's duty ethics is that a person must always be treated as an end and never as means to an end. In Thiroux's example,

Kant would be against using a human being for experimental purposes "for the good of humanity" or for any other reason in which a human being would be considered as merely a "means" to an "end." Thus in the case I described [earlier] concerning the experimentation on one hundred babies now to save ten million children's lives in the future, Kant would definitely brand such experimentation as immoral. On the other hand, if an experimental procedure were necessary to try to save a child's life and it would also furnish doctors with information that would save lives in the future, Kant probably would allow it because, in this case, a human being would not merely

be used as a means to an end but considered an end in himself.¹⁰

One can see from the example above that utilitarian calculations as we have discussed previously are immoral according to Kant. Kant's second maxim, or as Thiroux refers to it, the practical imperative, is little different from what we would call human rights in modern terms. The Helsinki Accords put it as "the right to be free from governmental violations of the integrity of the person...."¹¹ Kant would probably remove the word "governmental" to expand the range of the definition, having it include all relationships, and not just that between the individual and society.

Finally, Kant states that in order for the action to be moral it must result from a sense of duty rather than an inclination. If a person, by his noncalculating nature, prefers to do what in a situation what our reasoning would tell is right, the action is not moral. Of course, neither is the action immoral, but the distinction points out Kant's emphasis on man's will. To say it again, for Kant, moral acts emanate from man's good will.

To summarize Kant, we would in order to act morally first formulate a rule for governing right action. We would then determine if the rule could be universalized, that is, to ask if the rule might always apply to all persons (the categorical imperative). If the rule passes this test, we

simply ensure that persons involved are being treated as an end and not as means (the practical imperative) and then choose to perform the act through a sense of duty rather than by inclination.

These, then, are examples of nonconsequentialist systems -- Divine Command theory, intuitionism, and Kant's duty-based ethics -- and stand in contrast to situation ethics and utilitarianism. As the category implies, these systems place little or no regard on the outcome of an action. The strength of nonconsequentialist systems is their avoidance of the seemingly incalculable requirements of systems which base moral acts on outcome. Perhaps even more importantly, nonconsequentialist systems can lay down a "strong set of moral guides" unlike consequentialist systems.¹²

The principal weakness of nonconsequentialism is that it does not consider consequences. What is the point of an ethical system except to determine right behavior, and for what end if not consequences? Second, how does the nonconsequentialist decide when rules conflict? What underpins the rules, and makes them valid and useful?

Next, we will consider an eclectic system which attempts to mitigate the problems as found in too rigid systems such as in nonconsequentialist systems (rules), and

"too fluid" systems as posed by consequentialist systems (calculations).

Eclecticism

Eclecticism is not a novel concept. It exists in virtually every area in which concepts and abstract theories exist. Philosophy is a particularly complex realm of thought in which many widely varying models explain phenomena ranging from where the universe came from, if anywhere, to man's existence, its purpose, and the attendant philosophy of what he ought or ought not to do. As with most areas in philosophy, definitions tend to polarize at extreme ends of a given range of action. This is useful because it helps us to make distinctions between positions and defines the range in which the concept operates. We have been looking at some of these polarized positions in the realm of moral philosophy, particularly with regard to consequences and rules. Now we consider an eclectic system which purports to solve some of the difficulties presented by extreme positions.

Thiroux's Humanitarian Ethics

Representative of an eclectic approach is Thiroux's "Humanitarian Ethics." He sets out in the formulation of this ethic with the goal of combining the best of competing ethical systems in mind. Thiroux begins by presenting five

principles. Understand that these are general principles that Thiroux advocates, and which he would say any moral system should possess; they are precursors to the particulars which will follow:

(1) The value of life principle. This is a principle contained in virtually all moral systems. It might even be stated as a presupposition to speaking about ethics at all, as it is so basic that an ethical system without this principle would be reduced to meaninglessness. The rules written with respect to this principle range from the Ten Commandments to the laws of every nation in every time and culture.¹³

(2) The principle of goodness. Thiroux's principle does not attempt to define the good, simply to state that it exists. Ethics deals with what men ought or ought not to do, implying that there is a right and wrong regarding action.

(3) The principle of justice. Justice is, to put it simply, the distribution of the good, whatever it might be. An ethical system should address the many and not the few.

(4) The principle of honesty. Morality is primarily about what men do in relation to other men. The principle of justice presupposes this statement. If this is true, then it is paramount that men communicate with each

other honestly. Any system depending on persons will break down quickly in the absence of truthfulness, and this is especially so for ethics. Thiroux argues agreeably that an ethical system must place a premium on truth-telling.

(5) The principle of freedom. If one accepts, as does this thesis, that human beings possess free will, then it should not be hard to accept that persons will differ on the best way to express their will. They will differ on how to pursue happiness, fulfill meaningfulness and interact with other persons. The point of this principle is that as a moral system is built, it is imperative that man's freedom be kept forefront in thought. That is, the system must be kept as unrestrictive as possible to allow the greatest possible exercise of free will. To paraphrase the Walter Matthau character from the movie "First Monday in October," Supreme Court Justice Snow, "the law's gotta be comfortable--it's gotta fit like a good suit of clothes. Otherwise it won't be worn." The same might be said here.

Now having introduced the basic principles, it is necessary to determine how conflicts among the principles will be settled. The reader may remember that this is a fundamental problem in an ethical system containing multiple principles or rules. Thiroux addresses the problem by introducing a general and a particular method for determining priority of the principles when they are found

in conflict. Within the general method the five principles are divided into a primary and a secondary category.

The primary category states that the first two principles--the principle of goodness and the value of life principle--take precedence over the others with goodness being first. The ultimate moral principle according to Thiroux is goodness; it is what moral action tries to achieve. The second principle is primary because without human beings there can be no human morality.

The secondary category in the general method for determining priority are the remaining three principles, in order, the principle of justice, the principle of truth-telling and the principle of individual freedom. When in conflict with one another, the higher principle takes precedence.

Thiroux, however, recognizes that the situations in which these decisions will be made are particular situations, and it is too simple to stack up five principles and then choose the higher ranking. While Thiroux does not offer a difficult case example, we may devise a simple abstract case which demonstrates the difficulty without spending much time on the problem. Say, for example, that the life of ten men may be saved at the expense of one hundred men's individual freedom. Do we simply consult the hierarchy of principles and decide to save the ten men

because the value of life principle is higher in the order than individual freedom? What if it is the life of one man versus the individual freedom of one million? The problem is thought provoking and the reader can probably devise even stickier calculations without much effort.

We have now examined in brief three examples of nonconsequentialist systems and a system which attempts to blend nonconsequentialism with consequentialism, that is, an eclectic system. The reader should keep these four approaches in mind, as well as the Professional Military Ethic (PME) discussed in chapter two and further defined below when examining the cases in the following chapter.

Defining the PME

Before wrapping up the portion of this chapter dealing with alternative moral systems, the PME is here explained more fully. The PME is difficult to define precisely because it is never brought together all in one place in military ethical writing. The PME offered here may differ somewhat from that found elsewhere. Nevertheless, there are several elements that most can agree on. First, the definition contained here includes Colonel Hartle's Humanitarian Principle # 1 (HP1), that of the traditional principle of human rights, and HP2, that of utilitarian calculations in determining right action, used identically

to utilitarian calculations discussions elsewhere in the thesis. Furthermore, HP1 is primary and HP2 is secondary.

Second, the PME incorporates international military law as contained in the Geneva and Hague conventions, and its underlying principles of military necessity and proportionality discussed in the just war and double effect sections below.

Finally, the PME here defined contains all of the elements in the Army Professional Ethic as contained in FM 100-1: The Army.¹⁴ The Army Professional Ethic consists of four values: (1) "**Loyalty** to the nation, to the Army, and to the unit is essential.... This demands total adherence to the spirit and letter of the lawful order.... It also produces dedication and pride in the unit, fosters cohesion, and engenders a sincere concern for the well-being of fellow soldiers."¹⁵ (2) "**Duty** is obedience and disciplined performance, despite difficulty or danger. It is doing what should be done when it should be done."¹⁶ (3) "**Selfless Service** puts the welfare of the nation and the accomplishment of the mission ahead of individual desires."¹⁷ (4) Finally, "**Integrity**...means honesty, uprightness, and the avoidance of deception."¹⁸

With the alternative systems in mind, we now look at where Fletcher says the situation ethic fits into this scheme.

Fletcher's Ethical Continuum

So far we have considered ethical systems along a continuum involving consequences or the lack thereof. While Joseph Fletcher talks in detail about consequences, when he sets out his own ethical continuum, he does not oppose the consequentialist situation ethic with nonconsequentialist systems. Rather he draws a continuum along which at one end is a total regard for the law (legalism) and the other extreme is a total disregard for the law (antinomianism). Situation ethics rests in the middle (Fig 1).

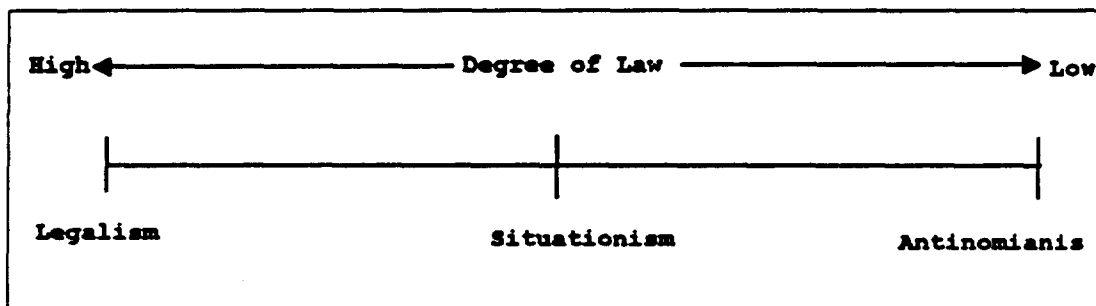


Figure 1

At the left end, or the low-regard-for-the-law end of the continuum, is antinomianism. The word "antinomian" was born in the time of religious reformation. Initially it referred to religious positions such as libertinism wherein "the belief that by grace, by the new life in Christ and salvation by faith, law or rules no longer applied to Christians,"¹⁹ or the more common position held by the Gnostics in which they claimed special knowledge, "so that neither principles nor rules were needed any longer even as

guidelines and direction pointers." We, however, are more interested in modern forms of the idea. Notice, for example, that intuitionism is a mild form of antinomianism as it involves special, if natural, knowledge. More importantly and more radically, existentialist ethics are a modern form of antinomianism. Fletcher describes Jean Paul Sartre's (the most famous exponent of existentialism) as follows:

Sartre speaks of "nausea," which is our anxious experience of the incoherence of reality. For him any belief in coherence (such as the Christian doctrine of the unity of God's creation and his Lordship over history) is "bad faith." In every moment of moral choice or decision "we have no excuses behind us and no justification before us." Sartre refuses to admit to any generally valid principles at all, nothing even ordinarily valid, to say nothing of universal laws.... Every situation has only its particularity!

On this view, of course, the existentialists rightly reject even all principles, all "generally valid" ethical norms or axioms, as well as all rules or laws or precepts that legalistically absolutize (idolize) such general principles. Radical discontinuity in one's theory of being forces the "absolute particularity" of *tout comprendre, tout pardonner*. Sartre is at least honest and tough-minded. In the absence of any faith in love as the norm and in any God as the norm-giver, he says resolutely: "Ontology itself cannot formulate ethical precepts. It is concerned solely with what is, and we cannot possibly derive imperatives from ontology's indicatives." He is, on this score at least, entirely correct!²¹

It is statements such as this that cause some to categorize Fletcher as an existentialist, but it is also evident from the passage that he does not count himself among their number. In fact he represents situation ethics as being a moderate position between existentialism (and

other lesser antinomian positions) and extreme legalism. If he has good to say about the freedom expressed by the existentialists, it is because he agrees with their denial of the absolute position of the law. The reader may recall that this notion has already been raised in relation to the Old and New Testaments, with the former's emphasis on the law and the latter's emphasis on faith and love.

At the other extreme is legalism. Little time need be spent explaining the concept. As morality and religion have held hands through the centuries, it is not surprising that moral positions have been dominated by laws. Cardinal Newman expressed the legalist viewpoint when he said,

The Church holds that it were better for sun and moon to drop from heaven, for the earth to fail, and for all the many millions who are upon it to die of starvation in extremest agony... that one soul, I will not say should be lost, but should commit one single venial sin."¹¹

Fletcher denies legal approaches this precipitous position, and will make all forms of legalism contingent upon Agape, or Christ-like love. For Fletcher, Agape (we reduced it to universal concern) does not relinquish its authority and must be consulted always; if love can only or best be served by an action denied by the law or rule, then the law or rule is meaningless. The law, as has been pointed out many times, has only extrinsic value, derived from universal concern. Fletcher's position is not however absent of law, as Gabriel would have us believe. The law is kept in its

place, rather, by the moral imperative of universal concern, that is, the love of all concerned.

Fletcher, then, regards situation ethics as being an eclectic position with regard to laws and rules. It is a reasonable and principled position demanding constant attention, never becoming entangled with splitting the hairs of the law, but neither wholly free to begin each moral decision anew. For Fletcher, the imperative of Agape, to love others as the primary, if not only manifestation of love of God, drives all moral choice.

Definition of Two Central Terms

Now we are almost ready to examine the cases. First, an explanation of the following two terms or concepts is provided. These are fundamental explanations and the reader should feel free to skip over either or both that he or she is familiar with:

- Just War and Military Necessity
- Double Effect and Proportionality

Just War

Just war is both the morally justified war, and the justly-fought war. Not all moral theorists agree that there is a "just" war. Among the subscribers to theories we have looked at in this chapter, Kantians find war morally unjustifiable due to the practical imperative to never

treat people as means. The unavoidable danger to innocent persons cannot pass this second maxim test. Victor Grassian writes,

Inevitably, when we drop our bombs and shoot our guns from great distances, we know that innocent people, including little children, will die as a result of what we do. For those fully committed to the Kantian way of thinking, such actions appear to be incapable of moral justification, regardless of how essential they are as a means to achieve however noble an end.²³

The discussion of military effects on noncombatants will be further discussed in the next section on double effect. For now we look at the justice of war (*jus ad bellum* opposed to *jus in bellum*.)

Utilitarians and situationists, unlike Kantians, will justify war as part of the calculations involved in the distribution of justice, or as Fletcher would say, love. Put simply, war, justly entered and prosecuted, will produce more good than harm. We sometimes express this as "there are things worse than war."

A widely accepted theory which justifies entering into war is the theory of aggression as put forward by Michael Walzer in Just and Unjust Wars (1992).²⁴ Walzer's legal model or formula for just war (with revisions), which Ranier H. Spencer summarizes in *Military Review*, February, 1993, is as follows:

(1) "There exists an international society of independent states."²⁵

(2) "This international society has a law that establishes the rights of its members--above all, the rights of territorial integrity and political sovereignty."²⁶

(3) "Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act."²⁷

(4) "Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other member of international society."²⁸

(5) "Nothing but aggression can justify war."²⁹

(6) "Once the aggressor state has been militarily repulsed, it can also be punished."³⁰

These provisions are designed to define the rights of states within international society, but as there is no means of enforcement, Walzer further revises these six to account for political realities and anticipated participation by nations under provision four above:

(Revision 1) "States may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence."³¹

(Revision 2) "To aid secessionist movements."³²

(Revision 3) "To balance the prior intervention of other powers."³³

(Revision 4) "To rescue peoples threatened with massacre."³⁴

(Revision 5) "Except when directed at Nazi-like states, the goals and limits of a just war are: resistance, restoration of the status quo ante bellum and reasonable prevention of future aggression."³⁵

Accepting that war is morally justifiable, the above provisions attempt to place reasonable boundaries on when and to what end we can engage in war. It allows that there are valid reasons for conducting war, and it is a very utilitarian-like calculation to make.

In the main, the situationist will agree. However, as the reader may have guessed, situationists find nothing binding in these rules. They are an excellent framework for thinking about just war, and represent a point of departure when the moral actor (person or state) regards the particulars in a given case, such as presented in Kuwait in 1990.

What is particularly important to understand is that the situationist allows for the conduct of war, because there are instances in which universal concern cannot be served by nonviolence. In a system very much concerned with outcomes, a rule-bound, Kantian-style denial of a moral war

fails the tests of pragmatism. One might even say that though such a position is admirable and even capable of being universalized, one recognizes somehow the inevitable martyrdom, and attendant futility of following the position to its bitter and logical ends. Now without reviewing the laws of war and what soldiers may do to each other and how, we will examine a facet of *jus in bellum* by reviewing the idea of the double effect and its relationship to innocents and noncombatants.

The Double Effect

The double effect is a generally accepted, yet highly controversial idea in which the unintentional killing of innocent persons is morally accounted for in the conduct of war. The double effect has a long and rich tradition in the western world through the Catholic Church beginning with Thomas Aquinas. In short, the theory states,

it is morally permissible to perform an action likely to have evil consequences (such as killing of the innocent) provided that one does not directly aim at these evil consequences (either as an end or a means) but instead aims at morally acceptable consequences (such as the killing of enemy soldiers or the destruction of military installations). Furthermore, one must believe that the likely good effects of one's actions are sufficiently good to compensate for allowing the evil effect (that is, the utilitarian notion of proportionality).¹⁶

The concept embraces also the idea of military necessity, that is, with moral considerations given, a warring state is able to take action as necessary to ensure victory. For

example, in war long-strike weapons may be employed against the infrastructure of a nation in order to diminish its ability to wage war, such as bridges, arms factories, and in general industrial capability to name only a few. Two of the "moral considerations given" are discussed above, being "double effect" and "proportionality."

Walzer, though, amends the rule of double effect, and again his work is summarized in Spencer's Military Review article. Walzer finds the traditional rule as far too permissive, and as Spencer puts it,

rare is soldier who will decide that his mission is not legitimate and important enough to satisfy proportionality. To say that completely predictable civilian deaths are unintentional--in a sense that has moral substance--is to engage in self-deceptions.³⁸

Walzer makes the following changes to the double effect theory:

The intention of the actor is good, that is, we aim narrowly at the acceptable effect; the evil effect is not one of our ends, nor is it a means to our ends, and, aware of the evil involved, we seek to minimize it, accepting risks to ourselves.³⁸

The double effect is intended, like most of the ideas in military moral philosophy, to deal humanely, if paradoxically, with the dichotomy of waging war and killing persons, with doing what is morally right. The double effect, again like most of the ideas here, rejects the notion that nonviolence is a viable answer because it flies in the face of experience. As long as there are "things worse than war," we will need to continue to examine humane

approaches to war, and continue to establish reasonable limits regarding its conduct if never all quite agreeing on what those approaches and limits are, or that they exist.

In this chapter we have hurried through a few salient issues pertaining to war, a few approaches toward it, its legitimacy, and its conduct. We have examined in brief nonconsequentialist, legalistic and antinomian systems standing in contrast to situation ethics. Now minimally armed for critical review we will examine some cases in between the general and particular cases to be found on the battlefield. General, because an endeavor is made to cover the breadth of action possible in battlefield situations and also general because there is no way to provide the detail found in even the simplest moral case facing a battlefield leader. The cases are particular because they attempt to present meaningful, realistic cases to highlight the processes of situation ethics and depart as far as possible from much of the abstract discussion which has dominated to this point.

Endnotes

¹Jacques P. Thiroux, Ethics Theory and Practice, (New York: Collier Macmillan Publishers, 1990).

²Thiroux, 57-8.

³Thiroux, 58.

⁴Prodigy 2-14-93, Academic American Encyclopedia, Grolier Electronic Publishing, Inc., 1993.

⁵No ethical system fails to make use of intuition; intuition is often the tool which identifies the core truths which reason confirms and then the two together with imagination synthesize into an ethical system. Intuition will also be the human faculty which "catches" on the less obvious moral difficulties in a particular situation, and then invokes reason for assistance with a solution.

⁶Thiroux, 62.

⁷Immanuel Kant, Foundations of Metaphysics of Morals, tran. Lewis White Beck (Indianapolis, IN: Bobbs-Merrill Educational Publishing, 1959): 18.

⁸Ibid.

⁹Ibid., 19.

¹⁰Thiroux, 63-64.

¹¹The New Lexicon Webster's Dictionary of the English Language, (New York: Lexicon Publications, INC., 1990): 471.

¹²Thiroux, 70.

¹³This is not a researched fact. The statement seems justified in that of all the known governments and cultures, none present an exception.

¹⁴U.S. Army, FM 100-1: The Army, from Fundamentals of Senior-Level Leadership in Peace and War (U.S. Command and General Staff College, 1992): 30-31.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Fletcher, 22-23.

²⁰Ibid.

²¹Ibid., 24-25.

²²Ibid., 20.

²³Grassian, 413.

²⁴Michael Walzer, Just and Unjust Wars, 2nd edition, (New York: Basic Books, 1992).

²⁵Spencer H. Ranier, "A Just War Primer, Military Review, 73 (February 1993): 21.

²⁶Ibid., 22.

²⁷Ibid.

²⁸Ibid.

²⁹Ibid.

³⁰Ibid.

³¹Ibid.

³²Ibid.

³³Ibid.

³⁴Ibid.

³⁵Ibid, 23.

³⁶Grassian, 415.

³⁷Ranier H. Spencer, "A Just War Primer," Military Review, 73 (February 1993): 24.

CHAPTER FOUR

MORAL CHOICE CASES AND THE APPLICATION OF SITUATION ETHICS

To this point we have examined the tenets and methodology of situation ethics, reviewed what writers have said of situation ethics in the past, and briefly considered alternative moral theories and key concepts such as the double effect. Now we come to cases. What follows are four cases involving moral dilemmas or conflicts occurring on the battlefield. It is impossible in the short length of this thesis to cover every possible or even most areas presenting the potential for military moral choice, though an effort is made to cover the most important and larger ideas. The four cases are:

1. McDonough's Patrol Revisited (MPR)
2. Hartle's Prisoners of War (HPW)
3. CGSC's The Road Past Mandalay (RPM)
4. Fletcher's Special Bombing Mission # 13 (SBM)

Each case begins with a summary of the details followed by one or more of the alternative moral systems' likely answers to the problem, with emphasis on the Professional Military Ethic (PME). In each case the SME will be briefly examined

in absolute terms and in relation to the presented alternative moral systems' position.

Case One: McDonough's Patrol Revisited

The details of this case are unchanged from chapter one. In short, then lieutenant McDonough threatened a rice farmer to coerce the old man in to leading his platoon through a minefield. McDonough possessed substantive evidence that the farmer knew the way through the minefield and on the other side of the minefield lay a wounded soldier requiring medical evacuation. Failure to evacuate the soldier quickly probably would have resulted in his bleeding to death. McDonough drew a knife and told the old man through an interpreter that he would kill him if he did not cooperate. The farmer complied, the soldier was saved and the farmer was released unhurt.

The Kantian answer: McDonough's action appears to fail (be immoral) according to both imperatives. The categorical imperative would require McDonough to be able to universalize his action determining it to be the appropriate solution for all persons in like situations. The formulation of such a rule would have to read something like "It is morally acceptable to coerce a person's assistance by the threat of his life in order to save another." And if the action according to the categorical imperative appears

marginal, the action is not close to satisfying the second imperative which demands that persons never be treated as a means.

The PME: McDonough's action passes Humanitarian Principle number 2 (HP2), the utilitarian principle, but fails the HP1, the human rights principle. Specifically, the farmer's human rights are denied and additionally the action violates the international law of war which the PME supports.

The SME: As has already been discussed in the first chapter, the SME finds McDonough's action in accordance with universal concern. McDonough's intention was to threaten, but never take, the old man's life. While the action was regrettable (cosmically), it was nevertheless necessary due to the unacceptable alternatives: more casualties trying to negotiate the minefield, or arriving too late to save the soldier due to circumnavigating the minefield.

Having conducted a quick review of the case which began the thesis, we now move on to a new and more difficult case.

Case Two: Hartle's Prisoners of War

The case is taken from Colonel Hartle's Moral Issues in Military Decision Making. He presents the case:

Consider the often-discussed prisoner case filled out as follows. The success of a small force in carrying out its mission will allow the seizure of a major

transportation center without a significant battle which would affect a sizable civilian population. If the battle does not occur, many combatant and noncombatant casualties will be avoided as well as extensive destruction of civilian property. The force carrying out the mission, however, captures several wounded enemy soldiers. The mission is such that accomplishment is not possible if the force keeps its prisoners in custody. If the commander releases the prisoners, the force will probably be compromised and unable to fulfill the mission. Under the circumstances, the commander of the force must decide whether to kill the prisoners and whether he can justify such execution.¹

Thiroux's Eclectic Humanitarian Ethic: The issue here, as stated, is whether or not the force's commander can justifiably execute the prisoners for the sake of the mission. Using Thiroux's eclectic method we begin by looking at the problem relative to his first principle, the value of life principle. And immediately we run into problems. The value of life principle states essentially Kant's practical imperative, but as Thiroux describes it, it does not rigidly preclude the conscious ending of a human life. But it is not clear whether he allows the type of utilitarian calculation that is necessary to execute the prisoners. In his narrative, the exceptions to this principle are in the areas of abortion, euthanasia and suicide. The case samples provided by Thiroux, and from which the reader might hope to receive insight in to how the ethic operates, involve stealing and rape, neither of which sheds light on this case.

In making moral choice Thiroux does allow consideration of the context or situation, but we cannot be sure how he intends it to be applied in a difficult case since he offers no cases involving calculation, and in the same passage refers to the life principle as a near absolute. What remains unclear is how he weighs several deaths now versus many deaths later. The Kantian nature of his principle would seem to preclude the execution of the prisoners as that would reduce them to the means for saving more lives by ending the war. In this same vein, we need not look at the Kantian solution because it is clear on this matter.

Thiroux's second principle is the principle of goodness. Here also the answer is ambiguous, as Thiroux does not define the good. If we assume that the good is some usual way of thinking of the good, then there is much to consider, such as the dire impact on the soldiers performing the executions, the ending of the war, and so forth, but in the end it seems goodness is not served because an action must pass the life principle test in order to be good. While some actions may pass the life principle and fail the goodness principle, it would seem that it can never be the other way around.

Having examined the two primary principles, we turn briefly to the secondary principles. First, the principle

of justice would seem to be passed by the action as this principle is concerned with the distribution of goodness. Since the action failed the goodness principle, this may seem at first contradictory. The difference now is that distribution is most concerned with numbers and the many lives saved by the actions weigh in heavily here. Second, the truth-telling principle does not come into play in this case. Finally, the principle of individual freedom is failed because it would be unreasonable to invoke this principle to justify the executions. It is not within the commander's individual freedom to make such decisions; this decision must be made in his capacity as a commander during time of war.

The PME: As in the first case, the action of executing the prisoners passes the utilitarian HP2. One of the assumptions throughout all the cases is that they will be played out as stated. In this case the execution of the prisoners leads to a curtailed war and saving of thousands of lives. Therefore, the action passes HP2, the utilitarian principle. Admittedly there are important secondary, tertiary, etc. effects resulting from an extreme action such as execution of prisoners, and the action does not pass HP2 quite as easy as it would at first seem. We will look at this more when considering the SME solution.

Once more, too, the action fails the primary HP1. Indeed it would seem that it is just this kind of case that HP1 and the attendant laws of war are aiming at in the treatment of prisoners. HP1 is primary in Hartle's work, and the laws of war would seem to back him up, explicitly for the purpose of preventing the kind of utilitarian calculation enabling the suspension of human rights that in this case would result in the prisoners' execution.

The SME: The SME would begin by examining the laws at work in the case. We already know that the case has been reduced to the moral dilemma of honoring the prisoners' human rights, or preventing the prolonging of the war through mission accomplishment. Now we can consider the "rules" involved. The SME will honor the law in every case possible, considering that laws are written from universal concern. In moral matters, however, the law does not command blind obedience for the reason that situations vary far beyond what the law can anticipate, and to put it simply, there are exceptions. For the law we turn to FM 27-10, The Law of Land Warfare, Chapter Three, Section III, paragraph 85, entitled "Killing of Prisoners:"

A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation even in the case of

airborne of commando operations, although the circumstances of the operation may make necessary rigorous supervision of an restraint upon the movement of prisoners of war."

Upon first reading this seems to cover the case pretty well.

A commander cannot kill his prisoners. Yet, looking a little closer, cannot we wonder that there is not a period after the first seven words, so that it would read, "A commander may not put his prisoners to death." This would seem to be the law's intent. Instead of the period, though, the law begins to explain when a commander cannot put his prisoners to death.

Now, before we examine the particulars of when a commander cannot put his prisoners to death (and is it okay in all other cases?), it might be useful to formulate in a sentence why it is we have a dilemma, that is, what is it we are asking in terms of executing the prisoners. Knowing the question, maybe the law will provide the answer. It should be a simple, but definitive question, such as, perhaps, "Can we kill our prisoners in order to accomplish the mission?"

We will not formulate all the possible questions that could possibly be answered by this law, but notice that in order to get an unequivocal "no" to our question we must attach very broad definitions to either the term "resistance" or "self-preservation," neither of which seems intended by the authors. Otherwise the letter of the law simply does not answer our question about mission

accomplishment, and certainly not in terms of utilitarian calculation, when we go on to ask about the few prisoners' deaths versus the thousands in a prolonged war.

This case is a practical example of why the law cannot answer all our moral questions on the battlefield: for every well-written law there are a host of situations for which the law must be amended, for which it simply does not produce a satisfactory answer; this difficulty in anticipating the myriad ways in which experience plays itself out is the reason we have the phenomenon we refer to as legalese, the interminable winding language which attempts to exhaust all possibilities. To end this law after "death" would be an improvement. The authors might then go on to offer examples, beginning with a disclaimer that declared incompleteness.

Here, as is often the case, the situationist (military officer) finds the law valuable as a point of departure, as McDonough did in the first case. And here, the SME, after exhausting all alternatives to executing the prisoners, also departs from the law. The facts, being as they are, and hanging in the balance being our mission accomplishment, an early termination of the war, and the saving of thousands of lives not to mention national wealths, the SME warrants the prisoners' execution.

Pause is taken now to point out vigorously that this is not a routine solution provided by the SME. The decision is made with much fear and trembling, yet with no particular regrets, those being reserved for the larger affairs which brought us to this sad situation. The decision is also not shared here to show the cool calculating power of the SME. Rather, the point is that the SME does not draw immovable lines which can never be crossed. To continue this metaphor, the situationist approaches each moral decision by throwing his "don't cross" line down on the applicable point of law, but then picks it up again to move it when universal concern is obviously not served.

If this dismissal of the law seems too easy and even anarchic, consider as part of the commander's decision process he might himself be undone on an occasion when law and moral action do not blend. This may well be such an occasion. While the situationist prides himself on the element of pragmatism in his process, he understands pragmatism may work against his particular good for the common good. In short, the commander may recognize that though the law is not applicable in his present case, the law to not kill one's prisoners is still a good and necessary law from the vantage point of universal concern. Would it do to not have such a law? In executing the prisoners the commander may do the right thing out of

universal concern and utilitarian-style calculation, but at the same time recognize that his own commanders may necessarily have to treat him similarly in the future.

The concept of punishing the innocent has always been controversial, but in fact is a situational reality, never approached with ease and comfort, but neither walked away from for the more superficial, and potentially even more uncomfortable position of legalism. The commander decides to execute the prisoners, invoking utility, knowing that he may be tried, convicted and executed for his right decision out of the same utility.

By now the reader may have sensed important implications in this discussion. The first would seem to be that not all persons are willing or able to calculate the circumstances the same as the situationist. If they were, the commander would have no problem. All would agree that he did the right thing and the case would be unpeculiar. Furthermore, if all could agree that he did the right thing, what is the moral force of the law, that is, if we are all situationists? These are difficult questions and because of its right emphasis on the pragmatic, difficult questions for situationism to answer. We have touched on these issues before when we discussed the teachability of the ethic. The problems are real. For now readers should be aware of the problem, and consider it as they look at this and the next

case. The issue will be readdressed in the next chapter.
To the next case.

Case Three: CGSC's The Road Past Mandalay

This case requires slightly more build up than the previous cases due its story line and complexity, but will require somewhat less analysis because much of the ground has been covered previously. The case is an excerpted pair of chapters from John Masters' autobiography, The Road Past Mandalay. At the time of this writing, the situation is a case study in leadership in the Command and General Staff College (CGSC) course, "Fundamentals of Senior-Level Leadership in Peace and War." At the time of the case Masters is a brigade commander in Burma fighting under Joe Stilwell against the Japanese in World War II. The general situation is well described in the CGSC introduction as follows:

Masters is the brigade commander of the 111 brigade (111th Indian Infantry Bde) which has been specially organized as an experimental Long Range Penetration Brigade for operation behind enemy lines. The mission of the 111th was to establish a blocking position north of Hopin, along the railroad valley. Another brigade, the 14th, was to move north as soon as possible to support the 111th. The 111th brigade's blocking position was code named BLACKPOOL. The block site was about 20 miles south of Mogaung, a focal point of the Japanese efforts in the area. The Japanese also held Myitkyina, and were fighting Stilwell above Kaming. The 111th was thus located behind enemy lines and in an area of heavy Japanese concentration. The brigade was intended to stop all traffic in the railway valley. The 14th brigade that was to reinforce the 111 never arrived. As pressure was placed on the Japanese by Stilwell's forces to the north the pressure on the 111

block increased.... The brigade has been behind enemy lines since March 8, a period of two months. During this time they have been harassing the enemy forces by day and night and they are exhausted.⁴

Though the above is an accurate depiction of the "facts" of the situation, it captures neither the human suffering, both physical and mental, nor the sheer desperation experienced by the brigade, especially poignant from the perspective of its commander, Brigadier Masters. He, however, in The Road Past Mandalay, brilliantly portrays the brigade's situation, an example of which follows.

Battered, sleepwalking soldiers passed, here two fit men, here two more supporting a third with a shattered foot, then a man with a head wound, then half a dozen unwounded, each with rifle and pick or shovel. Some wore shirts and trousers, some wore one or the other, some neither. Many men had no packs, for theirs had been buried or destroyed by shellfire. Now came a group with an officer, struggling under a three-inch mortar. These, I had specifically ordered, could be abandoned, for the barrel and base plate constituted very heavy loads, and the bombs weighed ten pounds each, but this mortar platoon was determined to hold on to at least one of its weapons, and I did not try to interfere. It rained, it stopped raining. For ten days none of us had felt any awareness of rain, or knew whether we were wet or dry, except as it affected our job, made the rifle slippery in the hand, caused the Bren-gun barrel to hiss and steam.⁵

There are perhaps a dozen moral issues in the fourteen short pages of the two chapters considered. We will focus on two, looking at them this time from the perspective of the PME and SME:

- First is Masters' withdrawal of the brigade from its blocking position without Stilwell's permission, in the

face of desperate circumstances and an order to fight to the last bullet and man.

- Second is Masters' order to execute nineteen friendly soldiers for whom the brigade surgeon held no hope, and would require extensive resources during the withdrawal in terms of transport, medicine and other precious medical support.

Withdrawal of the 111th Brigade

Masters' situation was, to put it gently, desperate. His wounded and dead alone would have marked his unit as combat ineffective by modern standards. Add to his unit's casualties disease, rain-soaked conditions, an 800-calorie-a-day dietary deficiency, barely enough ammunition to support a withdrawal, miserable communications for both signal and logistics, and the failed arrival of promised relief, and "desperate" does seem too gentle a description.

The crux of Masters' problem was that his unit was exhausted, the enemy pressure relentless and his unit about to be annihilated if he did not withdraw. He did not have permission to pull out of the blocking position, rather on the contrary, had been told to stay until the last man. His unit's fighting ability was already at a critical point at the opening of the two chapters, and would not have in the very near future been able to withdraw with or without

permission. Masters sends numerous "signals" (messages) through the chain of command requesting permission to withdraw and they are either denied by Stilwell, not received by higher headquarters, or not responded to if received. It is in these desperate straits that he decides to withdraw. Moral or not?

The PME: It seems in this first dilemma that traditional military values come more into play than do HP1 and HP2, though the former certainly applies in the case of Masters' troops. This is to say that the conflict in this dilemma is different than in the last two. In the first conflict, McDonough faced a relatively simple calculation in balancing between the rights of the farmer (noncombatant) and his wounded soldier, filtered through his command responsibility. In the last case the calculation was more complex as it involved several enemy soldiers versus the somewhat abstract thousands of persons at stake in the dragging on of the war. Now we have a case in which the considerations do not directly involve the civilian populace or the rights of enemy soldiers, but rather is a tension between one's own soldiers, and traditional military values including mission accomplishment.

It would be easy, if a little superficial, to state that the PME dictates a clear answer to the question, for example: mission first, welfare of the men second, or that

Masters had unambiguous orders to hang on and commanders simply cannot defy orders for the sake of military coherence (see "Duty" under the PME), especially as subordinates never have the same perspective as does their superior, or perhaps one even takes an idealistic position and speaks sincerely in terms of Masters being honor- and duty-bound to obey and die for his country if necessary. It might be possible to use the PME to support any of these positions, but the fact is this case is presented in the Command and General Staff College because there is no cookie-cutter solution and the college's intent is to provoke thought on military moral matters. In this case of early withdrawal, only military law, and even then vaguely, and military values, bear on Masters' decision, not, as in both the former cases, international law. This serves to emphasize the tension between military values and the integrity of the unit and its men, and of the commander's responsibility to oversee these tensions and ultimately decide.

Within the facts of the case presented in the two chapters, one can only really support that the withdrawal was justified. As there is no defense made in the lesson of Stilwell's seemingly obstinate refusals, or offerings made to show what gains Masters might have achieved by staying, other than to show the mettle of British troops, the student is left with a clear sense of the rightness of Masters'

decision. One intent of the lesson would seem to be that military moral decisions are difficult and answers cannot be prefabricated. The soldier, as moral actor, bears great responsibility, especially in the role of commander, and must ultimately be fully responsible for his own moral decisions. The lesson of personal responsibility is taught to military officers from the first day regarding violations of international and military law, but here is projected into grayer areas concerning responsibilities of command.

The SME: The SME arrives at the same conclusion a little less tentatively, as there is less trepidation with discarding the rules. While honor and duty are among the most difficult values to factor in calculations of utility, here they appear without point. Would we have remembered the 11th Brigade's last stand as heroic or as another instance of military narrow-mindedness. One might reflect on Alfred Lord Tennyson's "Charge of the Light Brigade" to gain some insight into the matter.

Masters' Mercy Killings

The second part of this case, the mercy killing of the nineteen friendly soldiers, is much different yet than the situations looked at previously. Here, Masters faced with crushing limitations on his ability to safely withdraw, and with scarce medical resources, is advised by a brigade

surgeon to mercifully kill the soldiers that are beyond all hope.

For his own reasons, probably understandable, Masters is not wholly clear in this scene on the actual facts. He referred to the doctor as "a doctor," the doctor's recommendation was implicit, and the final order was given as "Very well. I don't want them to see any Japanese."⁶ The reader knows the act is carried out because as Masters writes, "I went back up the ridge, for the last time. One by one, carbine shots exploded curtly behind me. I put my hands over my ears but nothing could shut out the sound."⁷

The PME and the SME: In the PME, the law, national or international, will not support mercy killings, and nothing in HP1 or HP2 permits the law to be overridden in this case. Neither will the SME support these killings, but for a different reason. The SME focuses on the impact upon those who will remain living that are closely involved in the killings. Otherwise, the conclusions are the same. The killings ought not to be done.

While there are elements in Masters' decision which we may feel deeply about, such as not allowing our soldiers to fall into enemy hands (which is an implied, but not very philosophic concern in this scene), there is little in the text to support the killings. (Admittedly, there is

evidence of an intensity in this scene which is undoubtedly ineffable, and the SME could support mercy killings with more evidence.)

Masters is so careful to convey the hopelessness of the soldiers' case, to show that they are as good as dead already, that one cannot help but wonder if the minuscule hope offered by leaving the soldiers behind, however distasteful that might have been, might not have been better than the memory of having ended their lives and their last glimmer of hope. By the grim picture painted by Masters, it is subject to doubt whether the soldiers were even capable of suffering. With the information available, the mercy killings were unjustified by the PME's and SME's standards. The PME is generally opposed to euthanasia, the SME particularly so in this case.

A point well-made by this case is that on the battlefield human action often operates at, and unfortunately sometimes beyond, the fringes of morally acceptable action. One senses the extreme stress involved in Masters' situation simply by the resigned rationalization present in this passage where he acquiesces to the mercy killings,

Very well. I have two thousand lives in my hand, besides these. One small mistake, one little moment of hesitation and I will kill five times these nineteen.⁹

These are complex decisions with the toughest of consequences. One should conclude that neither the PME nor SME offers easy answers to fringe questions such as euthanasia.

Case Four: Fletcher's Special Bombing Mission # 13

This is a case well known to us all. It is the bombing mission of the Enola Gay on August 6th, 1945. Fletcher does not render a conclusion, but rather provides the detail necessary for the reader to think about the action surrounding the dropping of "the bomb" in terms of situation ethics. These are the details; we will attempt to surmise the PME's and SME's approach afterwards. The text is Fletcher's.

Harry Truman had known nothing of the bomb until after his inauguration, following President Roosevelt's death. When Secretary Stimson told President Truman that "the most terrible weapon ever known" would soon be ready, he appointed an interim committee to consider how and when it should be used. They were all distinguished and responsible people on the committee. Most but not all of its military advisers favored using it. Winston Churchill joined in them in favor. Top-level scientists said they could find no acceptable alternative to using it, but they were opposed by equally able scientists.

Admiral Leahy opposed its use altogether. Arthur Compton and E. O. Lawrence, among the nuclear physicists, wanted a warning demonstration first. So did Admiral Strauss. Assistant Secretary of War McCloy and Under Secretary of the Navy Bard agreed that the Japanese ought at least to be told what they were now faced with. On the other hand, intelligence experts said the Japanese leaders were "blind to defeat" and would continue fighting indefinitely, with millions of lives lost, unless something like Little Boy shocked them into realism. Subsequently, however, the U.S.

Bombing Survey declared that the Japanese "would have surrendered prior to November" first in any case.

In June [the committee recommended] that (1) the bomb be used against Japan as soon as possible; (2) it should be used against a dual target of military installations and civilian concentration; (3) it should be used without prior warning of its coming or its nature.⁹

Special bombing mission # 13 is still a hotly debated matter in ethical discussions, none of which would be complete without a detailed examination of the world situation near the end of World War II. Though this will not be a complete discussion, among those considerations were the impatience of dozens of exhausted nations both in terms of will and wealth, that the action against the Japanese in the Pacific involved some of the most intense fighting ever known and the Japanese had clearly demonstrated their ability and willingness to fight to the death. Add to this that some projected the combined losses for completing the defeat of the Japanese into the hundreds of thousands, even approaching a million. In this context the special committee made its recommendations as stated above to Truman.

The PME: The PME does not support the dropping of the bomb on a concentrated civilian population. Several elements of the PME come to bear on Truman's decision to drop the bomb. Proportionality and the associated laws of war, HP1, and HP2 are all central. The Hague Convention number IV (1907), article 25, states,

The attack or bombardment of, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited."

It is doubtful that Nagasaki qualified as a defended place. Though bombardment is and was an accepted method of waging war, the requirement is that the place of bombardment must be defended or a place of war production. That the city contained factories producing war goods would not of course be reason for devastating indiscriminately the entire city. There was also not sufficient military force stationed in Nagasaki which warranted its destruction. Nagasaki was simply not a legitimate target for such a devastating weapon by international law. Closely associated to this article is the preclusion of:

Unnecessary Killing and Devastation. Particularly in the circumstances referred to in the preceding paragraph [article 25 above], loss of life and damage to property must not be out of proportion to the military advantage to be gained.¹¹

Only a liberal application of HP2, the utilitarian principle, warrants the bombing on grounds of military necessity. The savings of hundreds of thousands of lives, the ostensible utilitarian rationale, is suspect. Consider also Walzer's revision to the double effect as looked at previously, "to minimize it, accepting risk to ourselves." Most would agree that the atomic bomb did not win World War II, but only hastened its end by at most a few months, perhaps only two or three weeks. Additionally, rarely is the lasting world political effect of an atomic blast

figured into the utilitarian calculation. If one considers that the dropping of the bomb was the first act of the Cold War, and the first step in the subsequent decades of nuclear build-up, then the savings appears meager, if even existent.

The SME: While the SME focuses on universal concern, distributing it through utilitarian calculation, and while there is a powerful utilitarian calculation to be made in this case, the SME also attempts to calculate foreseeable consequences for all reasonable alternatives. This seems to be the great flaw with Truman's decision. For the SME only the ends can justify the means, but the ends will not justify every means. Consider at least one more alternative, and it has many variations. The foreseeable consequences appear little different for a case in which the Japanese are fully warned of the bomb's great power, followed, if necessary (and it probably would have been) by a highly publicized demonstration on an important military target. Only in the event of continued resistance should a drop on a civilian-populated area have been considered, and then again with a full warning. This would be an acceptable level of risk.

The consideration of reasonable alternatives is an important component of the SME. In an ethic which reserves the right to discard all rules and laws other than the regard for universal concern; the safeguard is in an

objective approach to the good of all concerned. Mistakes
will be made and are accepted.

Endnotes

¹Anthony Hartle, Moral Issues in Military Decision Making (Lawrence, Kansas: The University Press of Kansas, 1989): 75.

²U.S. Army, FM 27-10, The Law of Land Warfare (Washington: Department of the Army, 1956): 35.

³Interestingly, when I first formulated this question, it was to create a superficial question that would require substantial building upon. It turned out to be more profound than I originally thought. I initially envisioned running through a series of questions which would progressively narrow the question until it could be answered "yes." There turned out to be no better question than this original question with the answer, "it depends."

⁴U.S. Army, Fundamentals of Senior-Level Leadership in Peace and War: Advance Sheet Booklet, U.S. Army Command and General Staff College, 1992: 51.

⁵John Masters, The Road Past Mandalay, from Fundamentals of Senior-Level Leadership in Peace and War: Advance Sheet Booklet, U.S. Army Command and General Staff College, 1992: 56.

⁶Ibid.

⁷Ibid., 57.

⁸Ibid.

⁹Fletcher, 167-168.

¹⁰U.S. Army, FM 27-10, The Law of Landfare, (Washington: Department of the Army, 1956): 19.

¹¹Ibid.

CHAPTER FIVE

A NEW PERSPECTIVE

SUMMARY, CONCLUSION AND RECOMMENDATION

War is an ugly thing, but not the ugliest of things: the decayed and degraded state of moral and patriotic feeling which thinks nothing's worth a war, is worse.

John Stuart Mill

This chapter summarizes the situational military ethic (SME), presents the thesis' conclusion based upon the previous four chapters, and finally recommends that the professional military ethic (PME) as described in these pages be maintained (status quo).

Summary

The SME as offered in these pages is based upon the moral imperative of universal concern. Universal concern of persons is at the base of every moral choice. Principles, rules, and laws are useful to the moral actor, but they derive their worth from the benefit provided to the persons involved in the moral act. Principles, rules and laws, therefore, have only extrinsic worth. Universal concern, only, has intrinsic worth. Principles, rules and laws, however, as implied above, are not cast aside freely, but

will be fully honored by the moral actor in the great majority of cases. The difference between the PME and the SME is that the SME places emphasis on the moral actor's freedom and responsibility to make moral choice. The PME evaluates the moral act as it complies with the law and other understood rules of conduct, both written and unwritten. The SME evaluates the moral act in terms of who was helped.

As the vast majority of laws and rules are devised with universal concern in mind, the SME and PME part ways only in extreme cases.

In the case of life and death decisions occurring on the battlefield, the strict nature of the law will sometimes conflict with our most basic regards for the sanctity and dignity of life. This occurs not because the law or rule is wrong or bad, but rather because no law or rule can anticipate every possible situation, every concern for persons, in all its particular detail. Laws and rules are limited and cannot replace man's freedom when making moral choice. At best they serve to guide the moral actor's choices, applying in the majority of cases only because laws are generalized rules for conduct based on the concern for many.

While virtually every law is written with the good of most people in mind, the moral actor is still responsible

for his or her moral, or immoral, actions. True, this freedom of choice implies innumerable calculations in the course of a lifetime, but is doable as most of these calculations are done in a fraction of a second with the law or rule being unambiguously applicable.

Often the complaint of situation ethics is that it emphasizes the uniqueness of moral choice, when, as has been admitted here above the "rule" applies nearly all the time. The result is a deemphasis of laws and rules, for the sake of the anomaly, which opens the way for questionable, and ever unacceptable behavior. In response to this objection, here, the argument is not for the uniqueness of moral action, though this argument is not without merit, especially considering the extreme choices faced and made on the battlefield, but rather for an understanding that universal concern is the foundation of moral choice. It is an important matter of perspective. Laws and rules, giver excessive emphasis, overshadow that it is ultimately human free choice and universal concern which make an act moral or immoral. By calling the ethic "situational," the root of the matter is kept firmly in mind, and laws and rules are kept in their place as servants, and not made masters as can happen when "who is to be helped?" is forsaken for " what does the law say?"

Conclusion

The PME and SME do not often differ in practice. When they do, it is because the moral actor has chosen to abide by the letter of the law, giving inadequate attention to the persons involved, or has given preferential treatment to friendly persons in cases which the concepts of "just war" and "military necessity" simply cannot justify. This latter problem, though more than tangential, is a subject for another day, another paper. In the majority of cases the military moral actor does what is good for the persons involved, as did McDonough in coercing the Vietnamese farmer to lead his patrol through the minefield. That McDonough wrote openly of his violation of the laws of war, is prima facie evidence that the profession recognizes exceptions to the rules.

The military officer is a situationist since in the most difficult moral cases he or she is unwilling merely to apply or interpret the law. In the most difficult cases the officer calculates the foreseeable consequences of his action and does not fully equate the law with the right, as can be seen by the difficult choices made by Brigadier Masters under the extreme conditions which confronted him in Burma. His decisions, though recognized as excruciatingly difficult, are given more than a nodding approval in Command and General Staff College classroom discussions; they are

essentially regarded as heroic both in terms of human effort and result.

Also concluded, is that the military officer (and most everyone else) is insufficiently acquainted with situation ethics. A better understanding of the ethic would enable the officer to better grasp difficult battlefield choices without attributing choice merely to intuition, common sense, or sympathy, even if all of these enter into the equation. An understanding of situation ethics would enable the officer to depart from the law, not merely in the interest of uniqueness and over wholly untrod ground, but would provide the tools with which the difficult departure from accepted norms might be considered and calculated.

Recommendation

First, while one might argue that situation ethics is the best ethical theory available to assist persons in making moral choice, one also cannot deny that the ethic's pragmatism, which ultimately works against it as the ethic of choice. Pragmatism means that the ethic must work, and while the situational ethic has more merit than not, in the final analysis it is a difficult ethic. It requires a thorough understanding by all persons of the philosophical underpinnings of moral choice and though this is not undesirable, it is a departure from the way people have traditionally identified and recognized right and wrong

behavior. The preponderance of history, and that means experience, has been in varying degrees, legalistic.

In a practical way, the choice of ethical systems is less important than it might at first seem. Though the PME is legalistic in an unacceptable way to the situationist, in actuality a compromise occurs as discussed above in the conclusion: the military moral actor reconsiders the law when confronted with moral choice that seems intuitively questionable in terms of human life, dignity, or common good. The same elements which cause the moral actor to intuitively reconsider the law, lie at the base of situation ethics, that is, moral choice must regard the good of humankind. The situationist goes one logical but difficult step beyond legalism, to the law's foundation--the good of people. The reasoning moral actor does the same with or without a knowledge of situation ethics. It is the "reasonable" thing to do.

The recommendation, then, perhaps the interim step to a more profound ethical calculation, is that the situational ethic be presented to military students of ethics as it really exists and not as an "easy-out," expedient non-ethical system as so often occurs. The tension in teaching situation ethics as it really exists is, of course, that it challenges the bedrock status of the law,

a dangerous prospect, too dangerous, to many who are legalistically minded.

This thesis while incorporating the work of Joseph Fletcher, demonstrates one way in which the situational ethic may be secularized in order to generally apply to the military moral decision. Even if a Situational Military Ethic is unworkable in the larger military context, or merely unpalatable, or unteachable, its serious consideration as an ethical approach to difficult problems advances military moral thought and arms the military reader more fully for the difficult battlefield decisions which await him or her in the next war.

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